

ANSWER

Defendants and Counterclaim-Plaintiffs Papaya Gaming, Ltd., and Papaya Gaming, Inc. (collectively, “**Papaya**”), by and through their attorneys, for their Answer to the Complaint of Plaintiff and Counterclaim-Defendant Skillz Platform Inc. (“**Plaintiff**” or “**Skillz**”), assert as follows:

I. INTRODUCTION

1. Paragraph 1 consists principally of Plaintiff’s characterization of its asserted claims in its Complaint for which no response is required. To the extent that a response is required, Papaya denies the allegations in Paragraph 1, and avers that mobile games offered by Papaya are legal, fair, and skill-based.

2. Papaya admits that (a) the mobile gaming industry has grown in popularity over the past ten years, (b) the Skillz platform has hosted games titled “Solitaire Cube” and “21 Blitz,” and (c) games on the Skillz platform offer head-to-head competitions that may include cash prizes. Papaya otherwise denies the allegations in Paragraph 2, including the allegation that Skillz’s gaming platform is “revolutionary,” except that Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning the specifics of the Skillz purported “matching process.”

3. Papaya admits that it has offered games titled “Solitaire Cash” and “21 Cash,” and that it has described its games as a “fair and fun experience for everyone.” Papaya otherwise denies the allegations in Paragraph 3, except that Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning what Papaya’s unspecified “players believe.”

4. Papaya admits that it has described its games, competitions, and tournaments as “games of skill,” and that certain Papaya materials or communications include the language selectively quoted in Paragraph 4, except for the purported quotation that “[f]rom all entries received for each competition, the individuals who use their relevant skill and knowledge to accumulate the winning score or points according to the corresponding rules will be the winner(s).” Papaya further admits that its games are intended for players who are 18 years of age or older. Papaya otherwise denies the allegations in Paragraph 4.

5. Papaya admits that certain Papaya materials or communications include the language selectively quoted in Paragraph 5, except for the word “house,” which is Skillz’s self-serving term and is not a way in which Papaya has described its operations. Papaya otherwise denies the allegations in Paragraph 5.

6. Papaya denies the allegations in Paragraph 6.

7. Papaya denies the allegations in Paragraph 7.

II. THE PARTIES

8. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 8.

9. Admitted.

10. Papaya denies the allegations in Paragraph 10, except admits that Papaya Gaming, Inc. is a Delaware corporation.

11. Papaya is unable to admit or deny the allegations in Paragraph 11 because it fails to specify the “Papaya” entity at issue.

III. JURISDICTION AND VENUE

12. Paragraph 12 consists of Plaintiff's characterization of its claims for which no response is required.

13. Paragraph 13 consists of legal conclusions for which no response is required. Papaya avers that it is not contesting subject matter jurisdiction in this matter based on the claims in the Complaint.

14. Paragraph 14 consists of legal conclusions for which no response is required. Papaya avers that it is not contesting subject matter jurisdiction in this matter based on the claims in the Complaint.

15. Paragraph 15 consists of legal conclusions for which no response is required, except that (a) Papaya admits that certain Papaya materials or communications include the language selectively quoted in Paragraph 15 and footnote 1, including the binding arbitration and governing law clauses in Papaya's Terms of Use, (b) Papaya admits that its games 21 Cash, Bingo Cash, Bubble Cash, and Solitaire Cash are available for free download on the Apple App Store, and (c) Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning the purported but unspecified "various Papaya users that are based in this District" that are "identifie[d]" on a Facebook page. Papaya avers that it is not contesting personal jurisdiction or venue in this Court in this specific matter.

16. Paragraph 16 consists of legal conclusions for which no response is required. Papaya avers that it is not contesting personal jurisdiction or venue in this Court in this specific matter.

17. Paragraph 17 consists of legal conclusions for which no response is required. Papaya avers that it is not contesting personal jurisdiction or venue in this Court in this specific matter.

IV. FACTUAL ALLEGATIONS¹

18. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 18.

19. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 19.

20. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 20, except admits that Skillz operates a mobile gaming platform that is open to third-party game developers.

21. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 21, except denies Skillz's characterization that it developed "several groundbreaking technologies."

22. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 22, except admits that games on the Skillz platform offer online digital head-to-head competitions.

23. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 23, except admits that the mobile gaming industry has grown in popularity, and denies Skillz's allegations that (a) it developed "revolutionizing technology" and

¹ This Answer does not include the Complaint's section sub-headers, which are not factual allegations. To the extent that any response to the sub-headers is necessary, Papaya denies Skillz's self-serving (mis)characterizations reflected in those sub-headers.

(b) such Skillz technology was responsible for, or “fueled,” the growth of the mobile gaming industry.

24. Papaya admits that mobile gaming is in the mainstream, but denies Skillz’s allegation that “Skillz’s technology and drive” were responsible for that.

25. Insofar as Skillz does not identify the source of the “estimate[]” at issue, Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 25.

26. Admitted.

27. Papaya denies the allegations in Paragraph 27, except admits that Skillz operates a mobile gaming platform that is open to third-party game developers.

28. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 28.

29. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 29, except admits that “bracketed tournaments” have appeared in games on the Skillz platform.

30. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 30, except admits that the Skillz platform hosts games titled “Solitaire Cube,” “21 Blitz,” “Blackout Bingo,” and “Bubble Cube 2.”

31. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 31, except admits that the term “liquidity” can refer to the ability of players to readily find opponents, and avers that matching up players with opponents is a component of some skill-based mobile gaming operations.

32. Papaya denies the allegations in Paragraph 32 because they are oversimplified and abstract, and because the allegation of an “appropriate opponent” is vague and undefined.

33. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 33, including without limitation what unspecified “users” may “want.” Papaya admits that fair and quick matchmaking is a feature that certain skill-based mobile gaming platforms seek to offer to players.

34. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 34, except denies that Skillz is able to, or aims to, “ensure that each tournament is fair.”

35. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 35.

36. Papaya denies the allegations in Paragraph 36.

37. Papaya is unable to admit or deny the allegations in Paragraph 37 because the allegation is not clear in its reference to “[m]any” of “Skillz’s games.” Papaya admits that certain games that may be available on the Skillz platform have included chat functions for players.

38. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 38, except Papaya admits that certain games on the Skillz platform have included chat rooms for players.

39. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 39, except Papaya admits that user profiles are available on the Skillz platform.

40. Papaya denies the allegations in Paragraph 40, except admits that it was founded in 2016.

41. Admitted.

42. Papaya denies the allegations in Paragraph 42, except admits that certain games on the Skillz platform bear similarities to Papaya's games, and avers that Papaya offers skill-based gaming while Skillz purports to also offer skill-based gaming.

43. Papaya denies the allegations in Paragraph 43, except denies knowledge or information sufficient to form a belief about the cited "rank[ing]" metric, and admits that: (a) the cited November 8, 2021 "Calcalist" article (footnote 5) states that, "From 2020 to today, [Papaya's] games have . . . hit the milestone of 4 million downloads" and "its employee headcount has skyrocketed from 10 employees to roughly 70"; (b) in a May 19, 2023 blog post on the Papaya website (cited in footnote 6), Papaya refers to "over 50,000 daily downloads"; and (c) the cited January 10, 2024 "Calcalist" article (footnote 7) states that "[t]oday the company has 20 million downloads and 1 million daily users worldwide."

44. Admitted.

45. Papaya denies the allegations in Paragraph 45, except admits that in the cited November 8, 2021 "Calcalist" article (footnote 8), it states that Papaya's co-founder "confirmed that 95% of its players were American."

46. Papaya is unable to admit or deny the allegations in Paragraph 46 because it does not know what the allegation means when it refers to "numerous" Papaya players, and Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning where players "live."

47. Papaya denies the allegations in Paragraph 47, except admits that certain games on the Skillz platform bear similarities to Papaya's games, and both Papaya games and games on the Skillz platform can offer cash prizes. Papaya avers that it offers skill-based gaming while Skillz purports to also offer skill-based gaming.

48. Papaya is unable to admit or deny the allegations in Paragraph 48 because it does not know what the allegation means when it refers to "a typical user." Papaya further lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 48 regarding what an unspecified "individual player would be motivated to choose." Papaya otherwise denies the allegations in Paragraph 48, except admits that (a) both Papaya games and games on the Skillz platform offer in-game rewards that players can accumulate, and (b) generally speaking, playing more games on certain platforms can lead to more in-game rewards. Papaya avers that Papaya's games offer features and possibilities of greater rewards that may make its games more attractive than games on the Skillz platform to some players.

49. Papaya denies the allegations in Paragraph 49, and specifically that Papaya and Skillz are in a "zero-sum game," which is a characterization that ignores the differing features of the two platforms, the fact that the mobile gaming industry is expanding, and the existence of other skill-based mobile gaming platforms.

50. Paragraph 50 presents speculative hypotheticals about what "players expect" and what "could result," and thus cannot be simply admitted or denied. To the extent a response is required, Papaya denies the allegations in Paragraph 50 as oversimplified and lacking context.

51. Papaya lacks knowledge or information sufficient to form a belief as to whether Skillz's games uniformly "utilize a head-to-head matchup, where two players are matched up against each other, for a one to one matchup." Papaya avers that the games on the Skillz

platform of which Papaya is aware offer such head-to-head or one-to-one matchups, where two players are matched up against each other.

52. Papaya admits that its games offer multiplayer tournaments, where players can compete against several other players, and that some games may consist of up to 20 players or more. Papaya further admits that, in a May 19, 2023 blog post on the Papaya website (cited in footnote 9), it notes that the VP of Product at Papaya Gaming “explain[ed]” that “Papaya Gaming’s secret to success lies in its ability to transform single-player games into multiplayer, skill-based, real-money tournaments.” Papaya otherwise denies the allegations in Paragraph 52.

53. Papaya denies the allegations in Paragraph 53 as written, but admits that because its tournaments involve more players than head-to-head matchups offered by Skillz, Papaya games may present the prospect of larger cash prizes for the same entry fees, and that such a prospect “is enticing” to some users.

54. Papaya denies the allegations in Paragraph 54, but admits that players in Papaya cash-entry games typically pay entry fees. Papaya avers that, prior to any cash-entry competition or tournament, Papaya discloses, among other things, the number of players, the prize pool, and the payments that will be made to the top finishers based on their position in the standings.

55. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 55 concerning why “some users of Skillz” might “have migrated over to Papaya.” Papaya admits that its games offer the chance at larger cash prizes, and that such a prospect “is enticing” to some users.

56. Papaya denies the allegations in Paragraph 56, except admits that (a) Papaya claims to (and does) match players based on relative skill level based on its matchmaking algorithm, (b) head-to-head games on Skillz’s platform require only two players while Papaya’s

games may include more than only two players, and (c) such games therefore require more players to completely fill up.

57. Papaya denies the allegations in Paragraph 57, except, to the extent that Paragraph 57 is intended to convey that Papaya games generally take longer to fill with similarly-skilled players than Skillz's games, Papaya lacks knowledge or information sufficient to form a belief about such allegation insofar as Papaya does not have data regarding Skillz's purported matchmaking and/or algorithms.

58. Papaya denies the allegations in Paragraph 58, including Skillz's generalized and self-serving characterizations of how Papaya "advertises to the public," what such advertising "unmistakenly implies," and that such advertising is "false." Papaya refers to specific advertising and/or marketing materials for their complete and accurate contents.

59. Papaya denies the allegations in Paragraph 59 to the extent the quoted language is described as an "instance" confirming the accusations in Paragraph 58. Papaya admits that the FAQ on the Solitaire Cash website includes the quoted language, and Papaya refers to that website for its complete and accurate contents.

60. Papaya denies the allegations in Paragraph 60 to the extent the quoted language is described as an "addition[al]" instance confirming the accusations in Paragraph 58. Papaya admits that the Apple App Store preview page for Solitaire Cash includes the quoted language, and Papaya refers to that page for its complete and accurate contents.

61. Papaya denies the allegations in Paragraph 61 to the extent the quoted language is described as a "similar[]" instance confirming the accusations in Paragraph 58. Papaya admits that the Apple App Store preview page for 21 Cash includes the quoted language, and Papaya refers to that page for its complete and accurate contents.

62. Papaya denies the allegations in Paragraph 62 to the extent the quoted language is described as “also” an instance confirming the accusations in Paragraph 58. Papaya admits that the Apple App Store preview page for Bingo Cash includes the quoted language, and Papaya refers to that page for its complete and accurate contents.

63. Papaya denies the allegations in Paragraph 63, except admits that the Apple App Store preview page for Bubble Cash refers to the game as a “multiplayer game” that leverages players’ “skills,” and where “[a]ll users receive the same layout.” Papaya refers to the page for its complete and accurate contents.

64. Papaya denies the allegations in Paragraph 64, except admits that Paragraph 64 depicts one “Help” section appearing on the Solitaire Cash app on or around the date of the filing of the Complaint. Papaya refers to the “Help” pages on the app for their complete and accurate contents.

65. Papaya admits that one “Help” section on the Solitaire Cash app includes the quoted language and is as depicted in the screenshot in Paragraph 65, and Papaya refers to the “Help” pages on the app for their complete and accurate contents.

66. Papaya denies the allegations in Paragraph 66, except admits that Paragraph 66 depicts one “Help” section appearing on the Solitaire Cash app on or around the date of the filing of the Complaint. Papaya refers to the “Help” pages on the app for their complete and accurate contents.

67. The allegations in Paragraph 67 are comprised of Skillz’s generalized characterization of unspecified “publicly available descriptions” of three Papaya games. Papaya denies the allegations in Paragraph 67 as written, except admits that it advertises Solitaire Cash, 21 Cash, and Bingo Cash as games that are skill-based and played by players.

68. The allegations in Paragraph 68 are comprised of Skillz’s generalized characterization of unspecified “publicly available descriptions” of three Papaya games. Papaya denies the allegations in Paragraph 68 as written, except admits that it advertises Solitaire Cash, 21 Cash, and Bingo Cash as “fair.”

69. Papaya denies the allegations in Paragraph 69, except admits that the webpage set forth in footnote 16 includes the quoted language, and Papaya refers to that page for its complete and accurate contents, including language concerning which states do not support cash tournaments.

70. Papaya denies the allegations in Paragraph 70, except admits that Papaya games do not offer a chat function.

71. Papaya denies the allegations in Paragraph 71, except admits that Papaya games do not offer a function for users to access a competitor’s gaming history.

72. Papaya denies the allegations in Paragraph 72, except admits that (a) the quoted language is included in an exchange with an unverified, anonymous poster among the posts at the link in footnote 17, (b) in response to such post, Papaya did “not actually deny or refute . . . accusations that it deploys bots,” and (c) Papaya describes its games as a “fun and fair experience for everyone.”

73. Papaya denies the allegations in Paragraph 73 to the extent the pasted exchange is described as an “example” of any wrongful conduct alleged in Paragraph 72. Papaya admits that the pasted content reflects an exchange on the Apple App Store review pages for Solitaire Cash based on a post by an unverified, anonymous poster identified only by the handle “Niedhoffer” (who may or may not be a real Papaya user or a Skillz employee), dated September 9, 2023.

74. Papaya denies the allegations in Paragraph 74 to the extent the pasted exchange is described as “likewise” demonstrating any wrongful conduct alleged in Paragraph 72. Papaya admits that the pasted content reflects an exchange on the Apple App Store review pages for Solitaire Cash based on a post by an unverified, anonymous poster identified only by the handle “Fisherman6767” (who may or may not be a real Papaya user or a Skillz employee), dated January 6, 2024.

75. Papaya denies the allegations in Paragraph 75 to the extent they reflect Skillz’s selective and self-serving characterizations of reviews of Solitaire Cash, which has a highly favorable overall rating on the Apple App Store. Papaya admits that the pasted content reflects an exchange on the Apple App Store review pages for certain Papaya games based on posts by unverified, anonymous posters identified only their handles (“honesty19149”, “LCC_Modified”, “Ankoku15”)—who may or may not be real Papaya users or Skillz employees—with indeterminate listed dates (listed only as “1y ago” and “2y ago”), and with some of the pasted content reflecting that the posts had been “edited.”

76. Papaya denies the allegations in Paragraph 76, and refers to the response to Paragraph 75 with respect to the selective quotations from the unverified, anonymous post by “LCC_Modified” (who may or may not be a real Papaya user or a Skillz employee), and response thereto.

77. Papaya denies the allegations in Paragraph 77, except admits that (a) Papaya’s Terms of Use did not, at the time of the Complaint, state that Papaya matches users against bots, and (b) the pasted content reflects language included within the December 27, 2023 Papaya Terms of Use cited in footnote 19, and Papaya refers to such Terms of Use—as well as Papaya’s current Terms of Use—for its complete and accurate contents.

78. Papaya denies the allegations in Paragraph 78, except admits that Papaya's games are presented as (and are) skill-based and fair.

79. Papaya denies the allegations in Paragraph 79 with respect to what Papaya's Terms of Use supposedly "imply," and Papaya refers to the Terms of Use for its complete and accurate contents.

80. Papaya denies the allegations in Paragraph 80 and avers that, as of the date of the filing of this Answer, Papaya does not deploy bots to compete against live human players other than in tutorial games.

81. Papaya denies the allegations in Paragraph 81.

82. Papaya denies the allegations in Paragraph 82.

83. Papaya denies the allegations in Paragraph 83.

84. Papaya denies the allegations in Paragraph 84, which constitutes Skillz's self-serving characterization of unverified and anonymous online posts.

85. Papaya denies the allegations in Paragraph 85, except admits that the pasted content reflects an exchange on the Apple App Store review page based on a post by an unverified, anonymous poster identified only by the handle "Yubee224" (who may or may not be a real Papaya user or a Skillz employee), of an indeterminate time but listed as "edited" on "Apr 10."

86. Papaya denies the allegations in Paragraph 86, except admits that the pasted content reflects an exchange on the Apple App Store review page based on a post by an unverified, anonymous poster identified only by the handle "bestbyrns" (who may or may not be a real Papaya user or a Skillz employee), of an indeterminate time but listed as "edited" on "Apr 20."

87. Papaya denies the allegations in Paragraph 87, except admits that the pasted and cited content reflects exchanges on the Apple App Store review page based on posts by unverified, anonymous posters identified only by the handles “Lilith333” (with a listed date of “Apr. 12”) and “spoecadetspam” (with a listed date of “May 16”), each of whom may or may not be a real Papaya user or a Skillz employee.

88. Papaya denies the allegations in Paragraph 88, except admits that the pasted content appears to be posts on social media by unverified and often anonymous posters (*e.g.*, “Truth Storm Part 2”) who may or may not be real Papaya users or Skillz employees.

89. Papaya denies the allegations in Paragraph 89, except admits that the pasted content appears to be a post on social media by an unverified and anonymous poster, “TheRealMandy” (who may or may not be a real Papaya user or a Skillz employee).

90. Papaya denies the allegations in Paragraph 90, except that Papaya lacks knowledge or information sufficient to form a belief about the accuracy of the purported quotation because Paragraph 90 does not provide the source of such quotation.

91. Papaya denies the allegations in Paragraph 91.

92. Papaya denies the allegations in Paragraph 92, except admits that the pasted content appears to be a Facebook comment by a user listed as “Andrea Wiggins” (who may or may not be a real Papaya user or a Skillz employee).

93. Papaya denies the allegations in Paragraph 93 with respect to what Papaya “apparently recognized,” except admits that the Papaya Promotion Rules (which are separate from the Terms of Use) include the language pasted in Paragraph 93 without the emphases added by Skillz. Papaya refers to the Promotion Rules, Terms of Use, and other documentation for their complete and accurate contents.

94. Paragraph 94 is a purported description of New York law for which no response is required. Papaya refers to the cited sections of the New York State Constitution and to the New York Penal Law for their complete and accurate contents.

95. Paragraph 95 is a purported description of New York law for which no response is required. Papaya refers to the cited sections of the New York Penal Law for their complete and accurate contents.

96. The allegations in Paragraph 96 constitute legal conclusions regarding “the definition of gambling” for which no response is required. To the extent any response is required, Papaya denies the allegations in Paragraph 96.

97. The allegations in Paragraph 97 constitute legal conclusions regarding what would “not be considered illegal gambling” for which no response is required. To the extent any response is required, Papaya denies the allegations in Paragraph 97.

98. Papaya denies the allegations in Paragraph 98, except admits that Papaya has (accurately) marketed its games as skill-based.

FIRST CAUSE OF ACTION
(False Advertising Under the Lanham Act (41 U.S.C. § 1125(a)(1)))

99. Papaya refers to and incorporates by reference its responses to each of the foregoing Paragraphs as though fully set forth herein.

100. Papaya denies the allegations in Paragraph 100, except admits that Papaya (accurately) markets its games as fair.

101. Papaya denies the allegations in Paragraph 100, except admits that Papaya (accurately) markets its games as skill-based.

102. Papaya denies the allegations in Paragraph 102, except admits that certain Papaya marketing and advertising materials refer to “players” and “individuals,” and Papaya refers to such materials for their complete and accurate contents.

103. Papaya denies the allegations in Paragraph 103, except admits that certain Papaya materials include the language quoted in Paragraph 103 (save for the bracketed language added by Skillz), and Papaya refers to such materials for their complete and accurate contents.

104. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 104 with respect to how unspecified “Papaya users” “act reasonably.” Papaya admits that Papaya users may pay to enter cash-entry gaming tournaments on Papaya’s platforms.

105. Papaya denies the allegations in Paragraph 105.

106. Papaya denies the allegations in Paragraph 106.

107. Papaya denies the allegations in Paragraph 107.

108. Papaya denies the allegations in Paragraph 108.

109. Papaya denies the allegations in Paragraph 109.

110. The allegations in Paragraph 110 concerning what “is required” constitutes a legal conclusion for which no response is required. Papaya otherwise denies the allegations in Paragraph 110, and refers to the cited judicial decision for its complete and accurate contents.

111. Papaya denies the allegations in Paragraph 111.

112. Papaya denies the allegations in Paragraph 112.

113. Papaya denies the allegations in Paragraph 113.

114. Papaya denies the allegations in Paragraph 114.

115. Papaya denies the allegations in Paragraph 115.

116. Papaya denies the allegations in Paragraph 116.

SECOND CAUSE OF ACTION
(Violations of New York General Business Law (GBL) §349)

117. Papaya refers to and incorporates by reference its responses to each of the foregoing Paragraphs as though fully set forth herein.

118. Papaya denies the allegations in Paragraph 118, except admits that Papaya (accurately) markets its games as fair.

119. Papaya denies the allegations in Paragraph 119, except admits that Papaya (accurately) markets its games as skill-based.

120. Papaya denies the allegations in Paragraph 120, except admits that certain Papaya marketing and advertising materials refer to “players” and “individuals,” and Papaya refers to such materials for their complete and accurate contents.

121. Papaya denies the allegations in Paragraph 121, except admits that certain Papaya materials include the language quoted in Paragraph 121 (save for the bracketed language added by Skillz), and Papaya refers to such materials for their complete and accurate contents.

122. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 122 with respect to how unspecified “Papaya users” “act reasonably.” Papaya admits that Papaya users may pay to enter cash-entry gaming tournaments on Papaya’s platforms.

123. Papaya denies the allegations in Paragraph 123.

124. Papaya denies the allegations in Paragraph 124.

125. Papaya denies the allegations in Paragraph 125.

126. Papaya denies the allegations in Paragraph 126.

127. Papaya denies the allegations in Paragraph 127.

128. Papaya lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 128 with respect to how unspecified “Papaya users” “act reasonably.” Papaya admits that Papaya users may pay to enter cash-entry gaming tournaments on Papaya’s platforms.

129. Papaya denies the allegations in Paragraph 129.

130. Papaya denies the allegations in Paragraph 130.

131. Papaya denies the allegations in Paragraph 131.

132. Papaya denies the allegations in Paragraph 132.

133. Papaya denies the allegations in Paragraph 133.

V. PRAYER FOR RELIEF

Papaya denies that Plaintiff is entitled to any of the relief sought in the Complaint.

VI. DEMAND FOR JURY TRIAL

No response to the Demand for Jury Trial is required.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiff’s claims are barred in whole or in part by the doctrine of unclean hands.

Second Affirmative Defense

Plaintiff’s claims are barred in whole or in part by the doctrine of laches.

Third Affirmative Defense

Plaintiff’s claims are barred in whole or in part by the doctrine of acquiescence.

Fourth Affirmative Defense

Plaintiff’s claims are barred in whole or in part by the doctrine of waiver.

Fifth Affirmative Defense

Plaintiff’s claims are barred in whole or in part by the doctrine of estoppel.

Sixth Affirmative Defense

Plaintiff's claims are barred in whole or in part by the applicable statute(s) of limitations.

Seventh Affirmative Defense

Plaintiff has failed to take reasonable steps to mitigate or minimize damages.

Eighth Affirmative Defense

Any amount owed to Plaintiff should be reduced by the amount that Plaintiff owes to Papaya.

COUNTERCLAIMS

Papaya Gaming, Ltd. (“**Papaya**”), by and through its attorneys, for its Counterclaims against Skillz Platform Inc. (“**Skillz**”), Tether Studios LLC (“**Tether**”), Golden Wood Company, Ltd. (“**Golden Wood**”), Luckyo Limited (“**Luckyo**”), GameNexa Studios Private Limited (“**GameNexa**”), and DNR Game Studio (“**DNR**”), upon personal knowledge as to itself and upon information and belief as to all others, states and alleges as follows:

INTRODUCTION

1. This action seeks to end a campaign of consumer deception, fraud, defamation, and trademark and copyright infringement orchestrated by Skillz to cut down Papaya in a desperate effort to save Skillz’s cratering mobile gaming platform.
2. Papaya is an industry-leading developer of skill-based mobile games. Since 2019, Papaya’s games have offered customers the opportunity to earn rewards, including cash prizes, through their skill at gameplay.
3. Skillz has been unable to keep pace with Papaya’s player-friendly games, and as a result Skillz stands on the cusp of financial ruin.
4. Skillz’s fiscal condition is deteriorating, it has been unable to submit required financial statements to regulators, and its leadership faces significant exposure from a shareholder lawsuit.
5. Rather than focusing on ways to improve its own business model and attract more players—or simply returning what was left of squandered money to its investors—Skillz has launched an aggressive, deceptive, and multi-faceted campaign to take out other mobile gaming companies at all costs, with a particular focus on smearing Papaya.

6. Skillz’s campaign revolves around a central theme that is patently false: that Skillz—and Skillz alone—can be trusted to provide players with a fair and skill-based mobile gaming experience. Indeed, Skillz hypocritically positions itself as a noble defender of fairness in the mobile gaming space while defrauding players and defaming more successful platforms like Papaya.

7. Skillz has furthered this false narrative in several ways, including (a) launching a fraudulent website from the shadows, presenting wholly fabricated data concerning customer “complaints” about Papaya and seeking to weaponize state agencies to pursue investigations of Skillz’s competitors, (b) deceiving consumers by claiming, falsely, that the Skillz platform is absolutely free of computerized opponents, and (c) attacking other gaming platforms for supposed bot use and “scams,” including false accusations that Papaya previously “admit[t]ed” bot use in this case.

8. *First*, Skillz directed the creation, operation, and control of a fabricated website, 4fairplay.org (the “**4FairPlay Website**”), that was replete with false representations designed to strike at Papaya’s reputation and ruin Papaya’s standing among mobile gaming customers under the guise of an independent advocacy organization.

9. Among other fraudulent activity, the 4FairPlay Website featured fabricated customer complaints and statistics to create the illusion of widespread customer discontent with Papaya, and to induce 4FairPlay Website visitors to submit complaints about Papaya to state attorneys general.

10. Everything about the 4FairPlay Website was consciously designed by Skillz to provide a false sense of legitimacy and impartiality.

11. The 4FairPlay Website’s home page displayed a fake tracker that purported to show the volume of complaints about Papaya and other mobile gaming companies (except Skillz) that customers had submitted to law enforcement agencies.

12. The tracker continued to increase in number as a visitor stayed on the page, at a pace of one additional complaint every few seconds, giving the impression that complaints against Papaya and other companies were continuing to rise in real time.

13. But the tracker was pure fiction, displaying the same number each time a visitor opened the 4FairPlay Website, and showing that number continually increasing at the same rate while the visitor stayed on the page.

14. The 4FairPlay Website also displayed fake and fictitious content, including (a) a pie chart that purported to convey the percentages of complaints submitted per game—with Papaya’s games supposedly the subject of a plurality of all complaints, (b) a supposed map of “Complaints by [U.S.] state,” and (c) purported quotations and other details included in complaints submitted by visitors.

15. Tellingly, Skillz deliberately obscured any connections to the 4FairPlay Website by engaging a series of third-party consultants and hiding behind a front company.

16. Legal process has since compelled Skillz to admit, however, that it was behind the 4FairPlay Website.

17. Other evidence secured by Papaya has revealed that Skillz controlled the contents and design of the 4FairPlay Website, with officials as senior as its CEO and founder, Andrew Paradise, issuing directives related to design elements.

18. For example, Paradise suggested that the 4FairPlay Website should “feel more legal.”

19. **Second**, at the same time that it hurls accusations at Papaya and other companies, Skillz deceives multitudes of players by promising that the games on its own platform will feature only human opponents and will be absolutely free from bots.

20. Skillz's representations to the public about bot usage are express and unequivocal. Skillz trumpets the message repeatedly, including on its website: "Every Skillz tournament is between real players. Never bots."

21. Skillz knows full well, however, that its showy language and public pronouncements regarding the absence of bots conflicts with reality.

22. Numerous players have reported that, while playing Skillz-platform games, it became clear that they were facing bot opponents.

23. Player criticisms of Skillz's bot usage both expressly identify Skillz's false statements and how the players were deceived by those statements.

24. Skillz's Developer Documentation—directed at game developers who seek to offer games on the Skillz platform—explicitly provides for "utilizing bots in gameplay."

25. Moreover, in its opposition to Papaya's motion to dismiss in this litigation, Skillz conspicuously made a far more careful and narrow statement that Skillz "does not sponsor any bots in cash games on its platform" (ECF No. 35 at 25)—a far cry from the broad and categorical public declarations about bot usage that Skillz feels comfortable making outside the courthouse.

26. **Third**, Skillz's marketing strategy is rooted in false and defamatory messaging that Papaya is a "scam" and offers games that are unfair and not skill-based.

27. Even well after it filed the current lawsuit, Skillz republished on its social media pages a post from the website Bonus.com that incorrectly stated that Papaya had "admit[ted] bot use" in this litigation.

28. Skillz knew that was not true, but nonetheless exploited the post as an opportunity to defame Papaya by accusing it of “fraud” and actively operating “a scam,” and to attempt to position Skillz in the public eye as the only company that can “protect innocent players.”

29. Papaya does not incorporate “bots” or computerized opponents into its games other than in tutorial matches, which introduce new players to the rules of each game, do not involve payment of cash entry fees, and disclose the presence of automated “opponents.”

30. Upon information and belief, Skillz facilitated the creation and/or publication of the Bonus.com post.

31. Bonus.com is a portfolio website of Catena Media, a public relations company that creates content for clients in exchange for payment.

32. Upon information and belief, Skillz leveraged Bonus.com to make it seem as if the information in the post was generated independently and not at Skillz’s behest.

33. ***Fourth***, Skillz conveys to consumers that cash that they deposit and/or win on the Skillz platform is accessible immediately and can be withdrawn “at any time.”

34. In practice, however, that is not the case, leading to numerous complaints from players that they were not able to access their money as promised, let alone do so “at any time.”

35. Skillz has even been accused of suspending or banning accounts as pretexts to refuse to pay players their winnings.

36. Upon information and belief, Skillz has delayed or impeded cash withdrawals by players to secure additional revenues.

37. Skillz’s operation of the fraudulent 4FairPlay Website, willful false advertising, and defamatory statements harm consumers, who are coaxed into believing that Papaya is a bad actor, that Skillz is the only mobile gaming platform where players will not face bots and have a

“fair” opportunity to not only earn rewards, and that players can receive their cash withdrawals from the Skillz platform immediately.

38. Skillz’s conduct obviously also is intended to directly harm, and does directly harm, its competitor Papaya.

39. Skillz’s attacks on Papaya and false promises of purportedly fair and bot-free competition injure Papaya’s (and other non-Skillz operators’) reputation, and draw players to Skillz-platform games and away from Papaya’s games—games in which Papaya has invested significant time and energy, and that offer fair, enjoyable, skill-based play alongside popular features that Skillz-platform games lack.

40. At the same time as Skillz has engaged in its false marketing campaign, it has coordinated with various game developers—namely, Tether, Golden Wood, Luckyo, GameNexa, and DNR—to willfully violate Papaya’s copyright and trademark rights to free-ride on the goodwill and creativity of Papaya and its games.

41. Important to Papaya’s success is the intellectual property subsumed within Papaya’s games, including but not limited to strong (a) federally registered and common law trademark rights that Papaya has developed in the names and icons of its games through their continuous use in the U.S. market, and (b) federally registered copyrights in original artistic expression such as the games’ imagery and visual designs.

42. In a naked attempt by Skillz and mobile game developers to co-opt the success and notoriety of Papaya’s games, the Skillz platform features later-released copycat games that willfully imitate the names, iconography, and other visual elements of Papaya’s games.

43. Skillz’s conduct constitutes willful false advertising under Section 43 of the Lanham Act, willful consumer deception under New York General Business Law § 349,

defamation and civil conspiracy under New York common law, trademark infringement, false designation of origin, and unfair competition under Sections 32 and 43 of the Lanham Act, and copyright infringement under the Copyright Act.

THE PARTIES

44. Papaya Gaming Ltd. is a mobile gaming company incorporated and with its principal place of business in Israel. Its registered office is located at 35 Hamasger Street, Tel-Aviv-Yafo, Israel.

45. Skillz Platform, Inc. is a mobile gaming company incorporated in Delaware with its principal place of business at 6625 Badura Avenue, Las Vegas, Nevada 89118.

46. Tether Studios LLC is a Delaware corporation with its principal place of business at 2505 Anthem Village, Dr. E598, Henderson, Nevada 89052.

47. Golden Wood Company, Ltd. is a Colorado corporation with its principal place of business at 1312 17th Street Ste 2110, Denver, Colorado 80202.

48. Luckyo Limited is a foreign limited liability company with its principal place of business at 6/F Alexandra HSE, 18 Charter Rd, Central District, Hong Kong, Hong Kong.

49. GameNexa Studios Private Limited is a foreign limited liability company with its principal place of business at 1-98/9/C/5, Plot NO: 1, Near Image Gardens, Madhapur, Hyderabad, Telangana, India, 500081.

50. DNR Game Studio is a foreign limited liability company with its principal place of business at Capitol Heights, T2, F-604 Jat Tarodi, Near Medical Square, Nagpur, Maharashtra, India.

JURISDICTION AND VENUE

51. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1367(a).

52. This Court has personal jurisdiction over Skillz because Skillz transacts business in this District, directs its conduct toward consumers in this district, and committed a tortious act causing injury within this District.

53. This Court has personal jurisdiction over Tether because Tether transacts business in this District, directs its conduct toward consumers in this district, and committed a tortious act causing injury within this District. Tether offers standalone game applications, which are marketed, offered, distributed to, and utilized by users in this District and throughout the State of New York from whom Tether derives revenue.

54. This Court has personal jurisdiction over Golden Wood because Golden Wood transacts business in this District, directs its conduct toward consumers in this district, and committed a tortious act causing injury within this District. Golden Wood offers standalone game applications, which are marketed, offered, distributed to, and utilized by users in this District and throughout the State of New York from whom Golden Wood derives revenue.

55. This Court has personal jurisdiction over Luckyo because Luckyo transacts business in this District, directs its conduct toward consumers in this district, and committed a tortious act causing injury within this District. Luckyo offers standalone game applications, which are marketed, offered, distributed to, and utilized by users in this District and throughout the State of New York from whom Luckyo derives revenue.

56. This Court has personal jurisdiction over GameNexa because GameNexa transacts business in this District, directs its conduct toward consumers in this district, and

committed a tortious act causing injury within this District. GameNexa offers standalone game applications, which are marketed, offered, distributed to, and utilized by users in this District and throughout the State of New York from whom GameNexa derives revenue.

57. This Court has personal jurisdiction over DNR because DNR transacts business in this District, directs its conduct toward consumers in this district, and committed a tortious act causing injury within this District. DNR offers standalone game applications, which are marketed, offered, distributed to, and utilized by users in this District and throughout the State of New York from whom DNR derives revenue.

58. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b).

FACTUAL ALLEGATIONS

I. PAPAYA’S HIGHLY SUCCESSFUL MOBILE GAMING OPERATIONS

A. Papaya Is A Fast-Growing Mobile Gaming Company

59. Papaya is an industry-leading, skill-based mobile gaming company that was founded in 2016.

60. Papaya develops and supports mobile application-based games that feature skill-based multiplayer tournaments. In Papaya competitions, players can compete for real cash prizes and in-game currency rewards known as “gems.”

61. Papaya’s games feature competitive, multiplayer tournament play and the opportunity for winning players to earn both cash and non-cash prizes (each, a “**Papaya Game**” and collectively, the “**Papaya Games**”).

62. The Papaya Games are available for download on the Apple iOS App Store and the Samsung Galaxy Store.

63. The Papaya Games are games of skill that control for random elements to ensure that the winner of each game is determined by skill, rather than chance.

64. For example, in the card-based game SOLITAIRE CASH, all competing players are presented with the same digital card deck, in exactly the same order, ensuring that the winner of the game will be the player that is best able to exercise their skill and knowledge of the game to outscore their opponents (*e.g.*, by using their dexterity, speed, and knowledge to solve the deck more quickly).

65. To maximize both entertainment value and fair play, Papaya Games feature a skill-based matchmaking algorithm to match players with other players who typically achieve similar game scores.

66. Each Papaya Game categorizes players' skill level based on their previous scoring and other factors.

67. Over time, as players continue to play, Papaya's matchmaking algorithm learns more about each player's skill level and is better able to match that player against other players with similar skill.

68. Papaya's matches permit players to compete against other opponents, and typically feature between five and twenty opponents who are competing for the highest score.

69. In Papaya tournaments, the players who achieve the highest scores receive a fixed (and pre-disclosed) cash or in-game currency prize of ascending value based on their placement on the leaderboard.

70. As Skillz acknowledges in its Complaint, Papaya Games offer the "prospect of having a larger cash prize, but the same entry fee," and that feature may be "enticing to many users" of competitive mobile games. (ECF No. 1 ¶ 53.)

71. With their innovative gameplay and features, the Papaya Games have been popular and successful.

72. The Papaya Games have over 37 million total downloads, and over 4 million monthly active users.

73. The Papaya Games enjoy high user ratings on mobile app marketplaces like the Apple App Store.

B. Papaya Owns Valuable Intellectual Property Rights In Its Popular Games

74. Among the Papaya Games featuring competitive, multiplayer tournament play are SOLITAIRE CASH, BINGO CASH, and 21 CASH.

75. Papaya has continuously offered SOLITAIRE CASH for over five years, during which time it has been downloaded and played by millions of players in the United States.

76. SOLITAIRE CASH is a game in which players compete to win points by clearing the most cards from the board as quickly as possible and by creating sequences of cards in descending order, alternating by color.

77. As of the date of these Counterclaims, SOLITAIRE CASH has amassed over 340,000 ratings on the Apple App Store and boasts an impressive 4.6 out of 5 star overall rating.

78. As a result of continuous and exclusive use, Papaya has accrued valuable trademark rights in the SOLITAIRE CASH name and icon (pictured below). Moreover, these marks have developed strong secondary meaning, as mobile gamers associate them with Papaya and its high-quality, entertaining game.



79. Papaya has a federal trademark registration for the word mark “SOLITAIRE CASH” based on a first use in commerce on December 29, 2018 (U.S. Reg. No. 6115365).

80. Papaya also has a federal trademark registration for the SOLITAIRE CASH icon or logo based on a first use in commerce on December 29, 2018 (U.S. Reg. No. 6818227).

81. Papaya has continuously offered BINGO CASH since 2021, during which time it has been downloaded and played by millions of players in the United States.

82. BINGO CASH is a game in which players compete to win the most points by “daubing” called numbers on the Bingo board as fast as possible before time elapses. “Daubing” refers to marking off the appropriate squares on a Bingo board at the time they are announced.

83. As of the date of these Counterclaims, BINGO CASH has amassed over 150,000 reviews on the Apple App Store and boasts an impressive 4.7 out of 5 star overall rating.

84. As a result of continuous and exclusive use, Papaya has accrued valuable trademark rights in the BINGO CASH name and icon (pictured below). Moreover, these marks have developed strong secondary meaning, as mobile gamers associate them with Papaya and its high-quality, entertaining game.



85. Papaya has a federal trademark registration for the word mark “BINGO CASH” based on a first use in commerce on March 18, 2021 (U.S. Reg. No. 6374879).

86. Papaya also has a federal trademark registration for the BINGO CASH icon or logo, irrespective of color scheme, based on a first use in commerce on September 14, 2021 (U.S. Reg. No. 6821168).

87. Papaya has continuously offered 21 CASH since 2021, during which time it has been downloaded and played by millions of players in the United States.

88. 21 CASH is a game in which players compete to win the most points by quickly creating the most stacks of cards adding up to a value of 21, out of a deck of 52 cards and within a set time limit.

89. As of the date of these Counterclaims, 21 CASH has amassed nearly 16,000 reviews on the Apple App Store, and like BINGO CASH, Papaya’s 21 CASH GAME has a 4.7 out of 5 star overall rating based on reviews.

90. As a result of continuous and exclusive use, Papaya has accrued valuable trademark rights in the 21 CASH name and icon (pictured below). Moreover, these marks have developed strong secondary meaning, as mobile gamers associate them with Papaya and its high-quality, entertaining game.



91. Papaya has a federal trademark registration for the word mark “21 CASH” based on a first use in commerce on April 18, 2021 (U.S. Reg. No. 6374878).

92. Papaya also has a federal trademark registration for the 21 CASH icon or logo, irrespective of color scheme, based on a first use in commerce on April 29, 2021 (U.S. Reg. No. 6821167).

93. Along with the trademark rights Papaya has in the names and iconography of the Papaya Games, Papaya also has copyright in the unique artistic expression encompassed within the Papaya Games. This artistic expression includes without limitation icons, play screens, game boards, and the overall user interface of the Papaya Games.

94. The foregoing artistic expression in BINGO CASH is the subject of U.S. Copyright Registration No. PA0002481705.

II. SKILLZ’S FAILING MOBILE GAMING BUSINESS

A. Skillz Offers Only Head-to-Head Mobile Gaming

95. Skillz develops and markets software that hosts and supports head-to-head play in mobile games created by third-party developers, including games that require cash entries and permit players to win cash prizes.

96. Like the Papaya Games, Skillz's games are available for download on the Apple iOS App Store and the Samsung Galaxy Store.

97. Skillz represents that its cash competitions are available to "all players over the age of 18 in areas of the world where cash gameplay is enabled."²

98. Skillz's website also notes that cash games on its platform are available in New York State.³

99. In cash games on Skillz's platform, Skillz administers the collection of entry fees from competing players, and controls the electronic transfer of cash prize payments to winning players. Cash prizes are funded by the entry fees of players competing in each game or tournament, with Skillz collecting a fee for administering the tournament.

100. Skillz claims to match players together based on players' ability level and game history.

101. Unlike the Papaya Games, games on the Skillz platform offer head-to-head competition against only one opponent at a time.

102. Skillz-platform games, on balance, offer smaller cash prizes to winning players (relative to a player's entry fee) than do the Papaya Games.

103. Papaya and Skillz compete for many of the same players and prospective players, including players in New York.

² *What is Skillz?*, Skillz, <https://support.skillz.com/hc/en-us/articles/203748889-What-is-Skillz>.

³ *Who is eligible to compete in Skillz competitions?*, Skillz, <https://support.skillz.com/hc/en-us/articles/203685899-Who-is-eligible-to-compete-in-Skillz-competitions>.

B. Skillz's Business and Financial Condition Are Deteriorating

104. Skillz is in the midst of a financial downturn that has lasted for three years.⁴

105. Skillz's quarterly earnings reports demonstrate a drop in Skillz's year-over-year revenue, which totaled \$44.4 million in the first quarter of 2023,⁵ but fell to only \$25.2 million in the first quarter of 2024.⁶

106. Moreover, Skillz's second quarter sales in 2024 fell 43% compared to 2023.⁷

107. Skillz has lost nearly half of the average monthly paying users active on its platform in the same time span.

108. In July 2024, Moody's Investor withdrew all credit ratings of Skillz, affecting \$130 million in outstanding debt.⁸

109. Consumers have asserted that Skillz unreasonably delays and/or outright denies compensating players who seek to withdraw funds.

110. Skillz also has had difficulty submitting required regulatory filings in a timely manner.

⁴ StockStory, *Skillz (NYSE: SKLZ) Misses Q1 Sales Targets*, Globe and Mail (May 9, 2024), <https://www.theglobeandmail.com/investing/markets/indices/TXCX/pressreleases/26100097/skillz-nysesklz-misses-q1-sales-targets/>.

⁵ *Skillz Announces First Quarter 2023 Results*, Skillz (May 9, 2023), <https://investors.skillz.com/news/news-details/2023/Skillz-Announces-First-Quarter-2023-Results/>.

⁶ *Skillz Announces First Quarter 2024 Results*, Skillz (May 9, 2024), <https://investors.skillz.com/news/news-details/2024/Skillz-Announces-First-Quarter-2024-Results/>.

⁷ *Skillz Inc 2Q Observed Sales Fall 43% Bloomberg Second Measure*, Bloomberg (July 8, 2024).

⁸ *Moody's Ratings withdraws Skillz's ratings*, Moody's Investor (July 1, 2024), <https://ratings.moody's.com/ratings-news/424237>.

111. For example, Skillz filed a notice indicating that it was not able to timely file its Form 10-Q for the first quarter of 2024 with the U.S. Securities and Exchange Commission, asserting that Skillz needed additional time to complete the necessary financial audits.⁹

112. Approximately two months prior, Skillz submitted a notice indicating that it was unable to file its Form 10-K for 2023 within the statutorily required period.¹⁰

113. As of the filing of these Counterclaims, Skillz still has not filed its Form 10-Q or Form 10-K.

114. Skillz's last three Chief Financial Officers have left shortly after assuming their role, with an average tenure of a little over a year.¹¹

115. Skillz and/or its senior executives are facing significant exposure from, among other legal issues, a shareholder derivative action filed in Delaware state court: *Hanna v. Paradise*, No. 2024-0228 (Del. Ch. filed Mar. 8, 2024).

116. The plaintiffs in the *Hanna* action have alleged that former and current Skillz executives manipulated the disclosure of material nonpublic information to maximize their profit from sales of Skillz stock at the expense of the company and other stockholders.

III. SKILLZ RESORTS TO FRAUD, DECEPTION, AND ATTEMPTING TO WEAPONIZE STATE AGENCIES TO TRY TO SALVAGE ITS BUSINESS

117. Rather than address its serious corporate, financial, and operational issues head-on or seek to improve its own product, Skillz has resorted to misguided, underhanded, and unlawful tactics to try to save its failing operations.

⁹ Skillz Inc., Notification of Late Filing (Form 12b-25) (May 10, 2024).

¹⁰ Skillz Inc., Notification of Late Filing (Form 12b-25) (Mar. 14, 2024).

¹¹ Skillz Inc., Current Report (Form 8-K) (May 5, 2021); Skillz, Inc., Current Report (Form 8-K) (June 30, 2022); Skillz Inc., Current Report (Form 8-K) (Jan. 8, 2024).

118. Those tactics include a multi-faceted campaign of deception and fraud intended to position Skillz’s mobile gaming platform as uniquely free from reproach, and inherently more “fair” than those of other mobile gaming companies like Papaya.

A. Skillz Creates and Hides Its Involvement In the Fraudulent 4FairPlay Website

119. Skillz created and funded a false-front organization whose sole objective was to mislead the public into believing that a neutral unaffiliated organization was soliciting and receiving complaints about Papaya Games.

120. Through this false-front organization, and its public-facing website 4fairplay.org, Skillz intentionally misled and deceived consumers with the specific intent of harming Papaya.

1. The Use of the 4FairPlay Website To Tarnish Skillz’s Competitors and Manipulate State Law Enforcement

121. From approximately September 2023 through late February 2024, the 4FairPlay Website was active and displayed content to the public.¹²

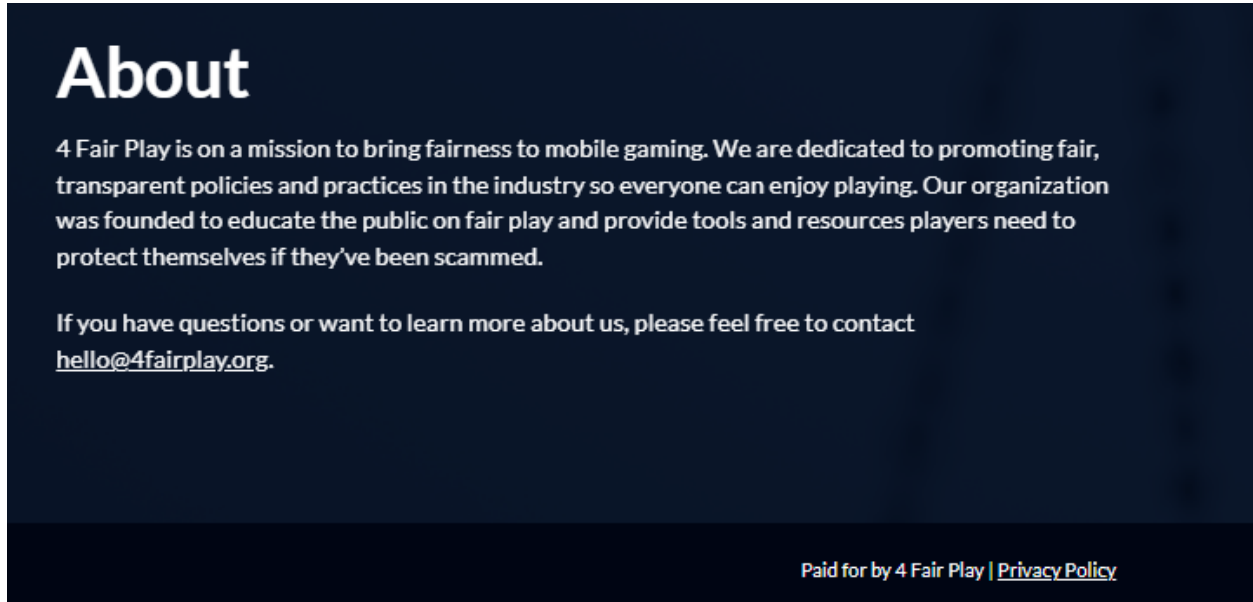
122. The 4FairPlay Website was taken down at some point between February 28, 2024 and March 9, 2024—*i.e.*, within days of Skillz’s filing of the Complaint against Papaya in this litigation on March 4, 2024.

123. The operator of the 4FairPlay Website was identified on that website as an organization called “4 Fair Play,” the fictitious alternative name of a Virginia corporation called “Fair Play for Mobile Games.”

124. Skillz and/or its executives created and funded Fair Play for Mobile Games.

¹² Although the Website is no longer accessible, its contents were archived on several dates throughout its lifespan. This Complaint describes the contents of the Website as they existed on February 28, 2024. Based on a review of the Website as archived, the contents of the Website were substantially similar from the date of the first archive (November 7, 2023) through the remainder of its existence. Screenshots of the contents of the February 28, 2024 archive are attached as Exhibit (“Ex.”) 1.

125. The “About” page on the 4FairPlay Website stated that “4 Fair Play is on a mission to bring fairness to mobile gaming. We are dedicated to promoting fair, transparent policies and practices in the industry so everyone can enjoy playing. Our organization was founded to educate the public on fair play and provide tools and resources players need to protect themselves if they’ve been scammed.”



126. Fair Play for Mobile Games was dissolved on March 1, 2024—*i.e.*, three days before Skillz’s filing of the Complaint against Papaya in this litigation.

127. The working title of the 4FairPlay Website at its inception was “Fight Fraud For Papaya.”¹³

128. The 4FairPlay Website included at least three sub-pages, including: (a) a home page purporting to display data related to the submission of customer complaints to state law enforcement agencies and encouraging visitors to file a complaint; (b) a “File a Complaint” page urging visitors to use a pre-populated form to submit a complaint against three companies,

¹³ See Ex. 2 (Screenshot of draft 4FairPlay Website).

including Papaya, to a state law enforcement agency; and (c) a Frequently Asked Questions (“FAQs”) page providing information about submitting a complaint to state law enforcement agencies and lauding companies that supposedly provide fair gaming experiences.

129. Referring specifically to “fraudulent games” from mobile gaming operators Papaya, Avia Games, and Acerena—but *not* Skillz—the 4FairPlay Website implored visitors to “Act now” and “Fight back against scam games” to prevent operators from “steal[ing] your money and get[ting] away with it.”

Which companies are behind these fraudulent games?

Papaya Gaming owns and operates Solitaire Cash, Bubble Cash, and Bingo Cash – as well as dozens of other mobile “cash” app games. Avia Games owns and operates Solitaire Clash, Bingo Clash and Bingo Tour as well as other similar games. Acerena Inc. owns and operates Solitaire King, Bingo King and Battle Bingo.

Fight back against scam games!

Don't let these games steal your money and get away with it! They promise fair competition, but secretly pair players like you against a bot that is programmed to make sure you lose more money than you win.

ACT NOW!

FILE A COMPLAINT FAQ ABOUT US

130. Visitors were invited to submit complaints to the attorney general in their state of residence, and were told that they “may be entitled to compensation.”

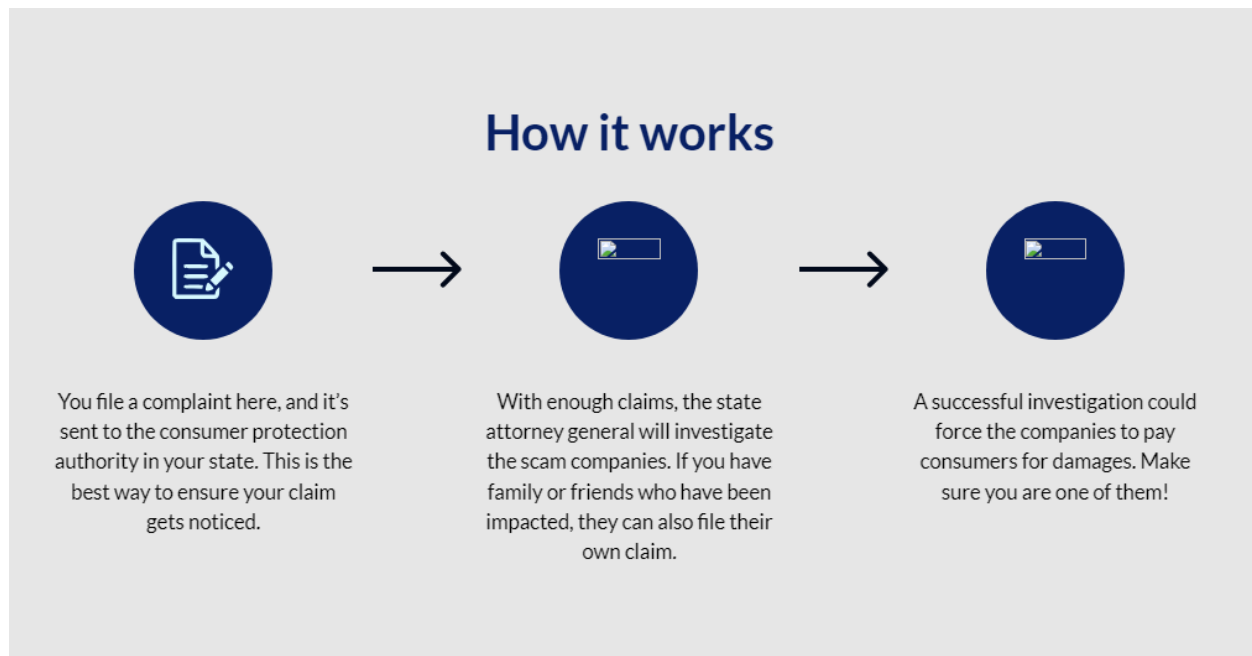
File a complaint. It only takes a minute.

If you've lost money playing against bots, you're not alone—and you may be entitled to compensation. It's time you got your hard-earned money back by bringing those companies to justice.

[File a complaint today.](#)

By clicking 'submit', an email will auto-populate with your information so you can directly share your complaint with your local attorney general. This is the most effective way of bringing these gaming companies to justice and receiving compensation.

131. The 4FairPlay Website further promised that “[w]ith enough claims, the state attorney general will investigate the scam companies,” and that “[a] successful investigation could force the companies to pay consumers for damages.”



132. To target only Skillz's chief competitors, route complaints directly to state attorneys general, and facilitate submission of complaints with minimal visitor effort and engagement, the 4FairPlay Website auto-populated the complaint forms.

133. The auto-populated forms listed only games developed by Papaya, AviaGames, or Acerena.

134. The auto-populated forms did not list games developed or hosted by Skillz.

135. A visitor who sought to submit a complaint about a game developed or hosted by another company (such as Skillz) was not presented with any option to do so.

136. Skillz took additional steps to ensure that the 4FairPlay Website would not impugn games on Skillz’s platform.

137. For example, one of the Website’s FAQs indicated that not “all” mobile cash-entry games are a “scam,” preserving the possibility that Skillz—the company conspicuously absent from the 4FairPlay Website—is not “taking advantage of players by withholding money and creating unfair playing environments.”

Frequently asked questions

How do I know if I’ve been scammed? ^

What if I want to report a game that is not listed here? ^

Are all mobile real-money games a scam? v

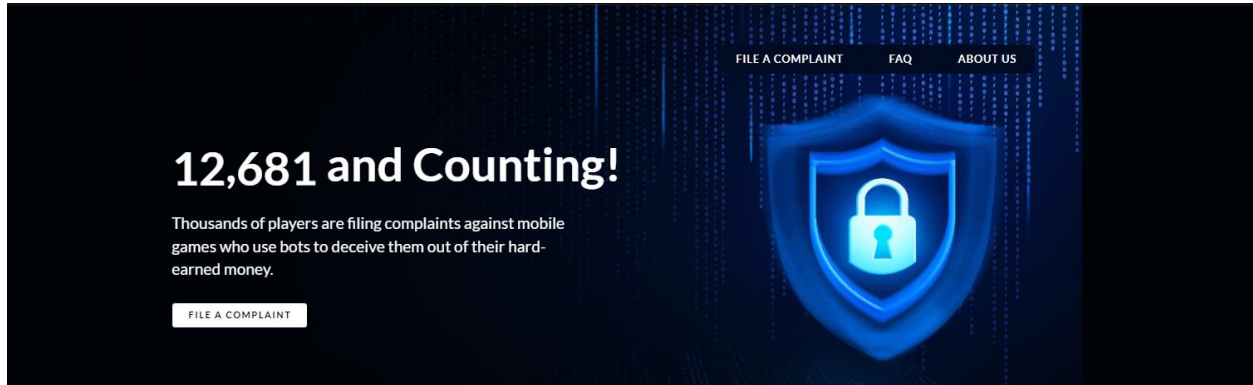
Not at all! In fact, mobile gaming has witnessed tremendous growth over the last few years and people all over the country are spending their time playing games with their friends and against competitors. But sadly, a handful of companies have popped up who are taking advantage of players by withholding money and creating unfair playing environments, like deploying bots to ensure an unwinnable game (and more money lining their pockets).

What happens next? ^

2. *The 4FairPlay Website Featured Wholly Fabricated Data and False Representations to Both Smear Papaya and Make the Website Appear Impartial and Legitimate*

138. Central to the fraudulent messaging of the 4FairPlay Website was the presentation of Skillz’s biased and self-interested claim that Papaya “scam[s]” customers under the guise of supposedly impartial, objective data. But that “data” was utter fiction.

139. *First*, the home page displayed a banner with an increasing counter purporting to show the number of complaints allegedly submitted to state law enforcement agencies about Papaya and two other mobile gaming companies. Accompanying text stated that “[t]housands of players are filing complaints against mobile games who use bots to deceive them out of their hard-earned money,” followed by a button that visitors could click to “File A Complaint.”



140. The counter was a fabrication, and did not reflect an actual number of complaints filed against mobile games or mobile gaming operators.

141. Each time a visitor navigated to the 4FairPlay Website, no matter the date or time, the counter presented the same fixed number: 12,594.

142. The counter on the 4FairPlay Website increased by an additional complaint every few seconds, whether or not a complaint was actually filed or submitted during that time.

143. The counter was not linked to any live database.

144. The number of complaints listed in the counter did not correlate with any complaints submitted through the 4FairPlay Website.

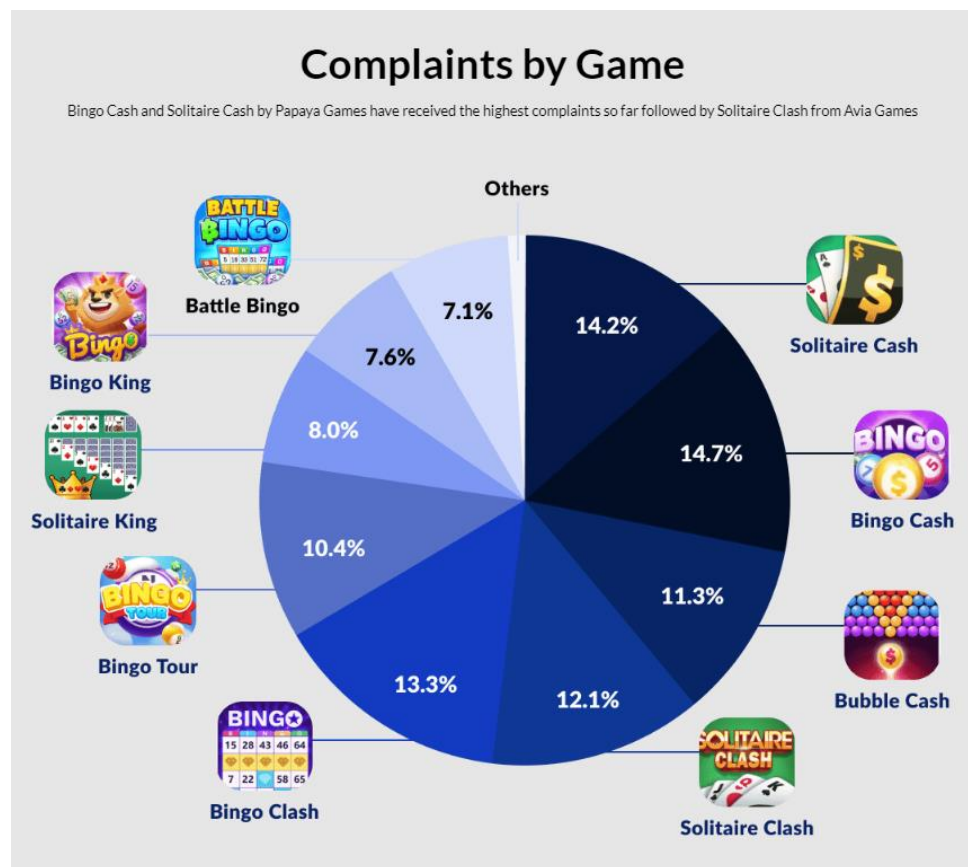
145. The source code of the 4FairPlay Website shows that the initial complaint figure and the rate of the increase were chosen by Skillz.

146. Skillz identified and publicized the 12,000 figure long before the website launched and complaints supposedly were collected. A March 2023 article—published roughly

six months before the 4FairPlay Website went live—quoted a Skillz official as stating that “[p]resently, over 12,000 folks have filed a grievance towards cellular video games over being deceived by AI bots, with on-line gamer safety platform 4 Honest Play.”¹⁴

147. There does not appear to be a website or other platform named “4 Honest Play,” and the “over 12,000” figure was made up.

148. **Second**, the home page featured a pie chart purporting to show the proportion of complaints submitted by game. A note accompanying the pie chart stated that “Bingo Cash and Solitaire Cash by Papaya Games have received the highest complaints so far followed by Solitaire Clash from Avia Games.”



¹⁴ Gaming News, *This Gaming Firm Takes an Anti-AI Stance in Newest Advert*, AIWorkTime (Mar. 12, 2023), <https://www.aiworktime.com/2023/03/12/this-gaming-firm-takes-an-anti-ai-stance-in-newest-advert/>.

149. Papaya developed three of the games on the pie chart, listed as representing a total of 40.2% of all complaints, with the remaining games developed by Acerena, AviaGames, and MOBIRIX Corporation.

150. In conjunction with the ticker on the home page, the pie chart thus suggested that complaints about Papaya represented 40.2% of the “12,594” and “counting” complaints submitted to state attorneys general, and that a new complaint was being filed against Papaya every several seconds.

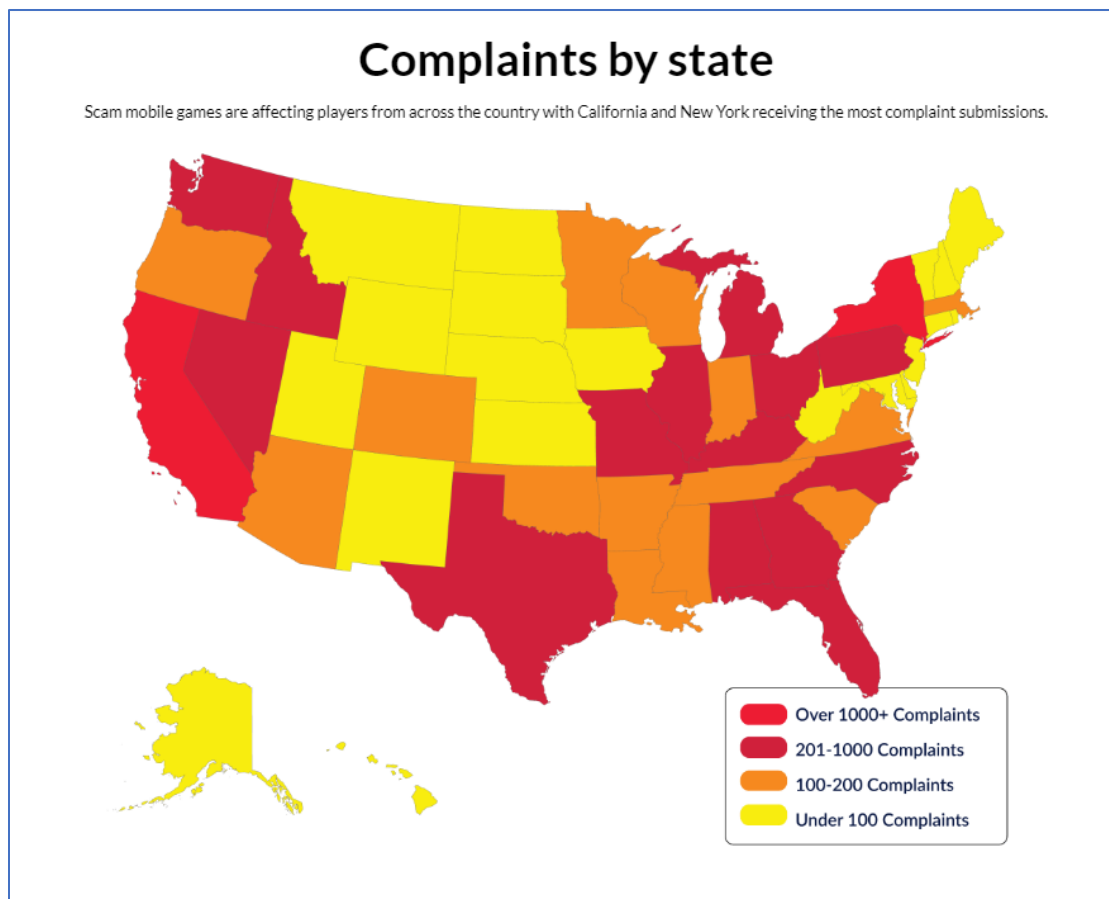
151. Like the ticker, however, the pie chart was not correlated with any actual complaints submitted via the 4FairPlay Website.

152. The figures in the pie chart remained static throughout the Website’s existence and were not linked to any live database.

153. To the extent that visitors to the website actually submitted any complaints, Skillz controlled the content of the complaints by priming visitors with false and incendiary statements about Papaya and ensuring that visitors could complain about only certain companies (most notably, Papaya).

154. Skillz thus falsely represented that Papaya was the leading target of complaints and that it was the predominant wrongdoer among mobile gaming companies.

155. **Third**, the 4FairPlay Website’s home page displayed a map purporting to show the number of complaints submitted per state. Accompanying the map was a statement that “[s]cam mobile games are affecting players from across the country with California and New York receiving the most complaint submissions.”



156. The map also presented invented data unconnected to any live database, and the map remained unchanged throughout the life of the Website.

157. **Fourth**, the Website displayed purported quotations from customer complaints submitted to law enforcement agencies and a supposed table of complaints listing names, states of residence, and subject games of visitors' complaints.

What Players Are Telling Us



Solitaire Cash, Bingo Cash, Solitaire Clash and Bingo Clash. We can't stand by and let them get away with it. And you should not allow this to happen to many citizens in your state. Take action now.

- L.G.S. from Pennsylvania



This is absolutely intolerable and just plain false advertising and just out right thievery and the companies are continuing to make millions from a public that trusts them. We can't stand by and let them get away with making a fool out of honest people and the government anymore.

- C.S. from Virginia



I've been playing Bingo Tour and Bingo Cash. And they always show that I am a 1 out of 3 winner and when the game is done processing, they bump me down to 3rd or 5th as if they [are] adding fake players to make sure I am not a winner.

- C.H. from California



With Solitaire Cash, the time they complete the game in many cases seems impossible. I have complained to the company and asked if I was playing against real people and they didn't answer.

- J.P. from Florida



Bingo Tour - I could tell something wasn't right. One minute you're about to be the number one winner but while you're waiting on 2,3 to 4 players, you're kicked right out the spot.

- K.S. from Texas



Solitaire Cash: I have hundreds of screenshots showing opponent names that were clearly automatically generated to create a bot profile - usually half of the players in each individual tournament were obviously fake.

- H.N. from Washington

Thousands of players have been scammed out of their money playing against bots



"The creators made 'competitive' bingo game where you play against other 'players' when in reality it's just AI that will always beat you..."

- Bingo Clash player



"I have genuinely never played a game that is so rigged in my life"

- Battle Bingo player



"It's stimulated to make you think your [sic] winning until you invest real money... BOTS BOTS BOTS"

- Bingo Cash player



"This game is 100 a bot scam that tries to trick you into thinking you're facing real players when you aren't"

- Bubble Cash player



"The generated bot names and pictures aren't fooling anyone. Wins/losses are predetermined once you hit play..."

- Solitaire King player



"Bottom line, the devs have rigged this app so it's almost impossible to win any money"

- Bubble Clash player

Real People, Real Action

Real people across the country shared their frustration and anger from playing scam games with their hard-earned money.

NAME	STATE	Games
ELLEN A.	NY	Bingo Cash, Bingo King, Battle Bingo
DERRICK W.	NE	Bubble Cash, Bingo Clash, Bingo Tour, Battle Bingo
LAUNCE G.	IN	Bingo Cash, Bubble Cash, Bingo Tour
ANDREW H.	NY	Bingo Cash
AMIR G.	VA	Bingo Clash
BRITTANY K.	CA	Solitaire Cash, Bingo Cash, Bubble Cash, Solitaire Clash, Bingo Clash, Bingo Tour, Solitaire King, Battle Bingo
VERLINDA S.	IL	Solitaire Cash, Bingo Cash, Bubble Cash, Solitaire Clash, Bingo Clash, Solitaire King, Bingo King
NOBUKO S.	CA	Battle Bingo
ELLEN F.	MS	Solitaire Cash, Solitaire Clash
VIVIAN A.	CA	Bingo Cash, Bingo Clash, Bingo Tour, Battle Bingo
SHARON N.	CA	Solitaire Cash, Bingo Cash, Solitaire Clash, Bingo Clash, Solitaire King, Bingo King
KASSANDRA Y.	CA	Solitaire Cash, Bingo Cash, Bubble Cash, Solitaire Clash, Solitaire King
SUSAN S.	NY	Solitaire Cash, Bingo Cash, Solitaire Clash

158. Upon information and belief, some or all of the quotations from and details about the complaints were fabricated.

159. Alternatively, the quotations and table created the misleading impression that customers overwhelmingly complained about Papaya (along with the two other mobile gaming companies), when, in fact, Skillz had provoked visitors with anti-Papaya propaganda and then manipulated the submission process to ensure that only supposed complaints about those three companies were submitted.

3. *Skillz Sought to Hide Its Involvement in the 4FairPlay Website By Using “Fair Play for Mobile Games” As A Front Organization*

160. Skillz took steps to shield its creation of, and involvement in, Fair Play for Mobile Games and the 4FairPlay Website from public disclosure.

161. Papaya nevertheless has been able to definitively link Skillz to the 4FairPlay Website after conducting pre-service discovery in a separate court proceeding filed against John Doe defendants in Virginia state court.

162. For example, the 4FairPlay Website was altered to remove any information that could lead back to Skillz.

163. Adam Shen, the designer whom Skillz paid to design the Website, deleted several default web pages that would have provided information regarding its design.¹⁵

164. The Website had no easily attributable identifiers, and all of the graphics on the 4FairPlay Website, aside from the logo, were stock images.

165. Skillz anonymously obtained the 4FairPlay Website's domain from registrar Tucows Inc. ("**Tucows**"), and facilitated the transfer of the domain from Tucows to an individual named Josh Levin.

166. On August 7, 2023, Levin retained The Gober Group PLLC ("**The Gober Group**") on behalf of Fair Play for Mobile Games (a Virginia corporation of which Levin was the Executive Director).¹⁶

167. Fair Play for Mobile Games registered the fictitious alternative name "4 Fair Play" on August 23, 2023.¹⁷

168. A disclaimer at the bottom of the 4FairPlay Website states that it was "Paid for by 4 Fair Play."

¹⁵ See Exs. 3 (Invoice); 4 (Email from M. Lombardo to M. McIntosh (July 1, 2024)).

¹⁶ See Exs. 5 (The Gober Group Acknowledgment of Terms of Service and Fee Schedule); 6 (Fair Play for Mobile Games, Articles of Incorporation).

¹⁷ See Ex. 7 (Fictitious Name Certificate).

169. Following its incorporation, Fair Play for Mobile Games executed a consulting agreement with Square Strategies LLC (“**Square Strategies**”), a firm controlled by Levin.¹⁸

170. Square Strategies performed a variety of services for Fair Play for Mobile Games, including establishing email service, using web engine hosting, facilitating Google advertisements, and working with a consultant at Assemble the Agency to draft op-eds supporting the Website’s mission.¹⁹

171. Fair Play for Mobile Games paid Square Strategies over \$75,000.²⁰

172. Levin facilitated the dissolution of Fair Play for Mobile Games on March 1, 2024—a mere three days before Skillz filed its lawsuit against Papaya.²¹

173. Skillz has admitted through counsel that it (a) “provided monetary funds to Fair Play for Mobile Games,” (b) made payments “related to 4fairplay.org to” the freelance web developer that designed the 4FairPlay website, “Mr. [Adam] Shen,” and (c) had “relationship[s]” with Shen The Gober Group.²²

174. Shen shared draft versions of the 4FairPlay Website with Skillz officials via Figma, a collaborative web application for interface design.²³

175. Skillz officials, including VP of Brand and Insights Orit Peleg, provided specific, detailed direction regarding the form and contents of the 4FairPlay Website.

¹⁸ See Exs. 8 (Consulting Services Agreement); 9 (Letter from J. Levin to Fair Play for Mobile Games Board of Directors (Aug. 14, 2023)); 10 (Fair Play for Mobile Games, Unanimous Written Consent of the Board of Directors).

¹⁹ See Exs. 11 (Square Strategies Invoices); 12 (Draft Op-Ed Draft).

²⁰ See Ex. 11.

²¹ See Ex. 13 (Fair Play for Mobile Games, Articles of Dissolution).

²² See Ex. 4.

²³ See Ex. 14 (Figma Screenshot).

176. A comment on the draft design obtained by Papaya reveals that “Andrew” reviewed and provided detailed input on the 4FairPlay Website’s contents. The “Andrew” referred to in that comment is Skillz’s CEO and founder, Andrew Paradise.

177. Paradise ordered the developers to “rethink the design to feel more legal firm.”

#73 · Page 1
Orit Peleg 9 months ago
minimize gap here

#72 · Page 1
Orit Peleg 9 months ago
Soumya can we go for this design but add a shield with a lock? faded in the background is fine.

#71 · Page 1
Orit Peleg 9 months ago
Soumya leave this as 'law firm logo' we don't know who it will be

#70 · Page 1
Orit Peleg 10 months ago
Soumya Andrew would like to rethink the design to feel more legal firm - grey colors, navy, more traditional etc. as ...

#69 · Page 1
Orit Peleg 10 months ago
Hear from other players who have scammed out of their money playing

AS.-0002 ?

178. Paradise made this suggestion to lend credibility to the falsehoods that Skillz sought to leverage to prompt government investigations of its competitors.

179. Skillz also conducted lobbying activities in at least California and New Jersey through Fair Play for Mobile Games, including lobbying attorneys general.²⁴

180. In its California disclosure, Fair Play for Mobile games described its lobbying activities as unspecified outreach concerning “Attorney General action relating to mobile gaming.”

181. Upon information and belief, Skillz peddled fabricated or misleading data from the 4FairPlay Website to state law enforcement officials in an effort to prompt investigations into Papaya and other competitors.

182. In light of the foregoing, it is clear that Skillz utilized Fair Play for Mobile Games as a front organization, and sought to hide its involvement in, and control over, both that organization and the 4FairPlay Website.

B. Skillz Falsely Presents Its Own Platform As Absolutely Bot-Free

1. Skillz’s False “No Bot” Marketing Campaign

183. The central but patently false message of Skillz’s marketing to consumers is that its platform and matchmaking technology are inherently more “fair” than those of other mobile gaming companies like Papaya. Indeed, Skillz stakes out a claim of being the *only* option for consumers seeking a fair, skill-based, bot-free game.

184. Skillz posted on its website a “letter to our community” from Andrew Paradise titled “Founded on Fairness.” That letter stakes out a purported “commitment to fairness on our platform,” and accuses “[a]n increasing number of” other mobile games of using bots.

185. Although this letter and its associated “fairness” subpage on the Skillz website (<https://www.skillz.com/page/fairness>) were taken down recently, an iteration of the “players”

²⁴ See Exs. 15 (California lobbying record); 16 (New Jersey lobbying record).

subpage of the Skillz website continues to display the hyperlinked text referring to “a special message from our CEO” that linked users to that letter:²⁵

Committed to Fair Competition

Skillz uses proprietary technology to pair players with similar skill levels, ensuring that every game is evenly matched and every player has a fair chance to win. [Read a special message from our CEO.](#)



186. Both in this “open letter” and elsewhere, Skillz represents to players and consumers that the games hosted on Skillz’s platform have never featured, and will never feature, competition against bots.

187. In the letter, Skillz asserts that it is “committed to rooting out and eradicating” bots, and that players of Skillz-platform games “can be sure we will continue to . . . only match you against real human opponents of equal skill. No unfair bots, not ever.”

188. Similar representations are prominently featured on various other pages on Skillz’s website. For example:

- Skillz states on its FAQ page that “Every Skillz tournament is between real players. Never bots,” and that “[w]hen you play Skillz-powered games [*i.e.*, games on the Skillz platform], you are matched with real players at your skill level.”²⁶

²⁵ See <https://www.skillz.com/players/#:~:text=Committed%20to%20Fair%20Competition,a%20fair%20chance%20to%20win>. The content of the letter also remains visible as part of a separately uploaded slide deck on Skillz’s website that appears to be related to the “2024 Game Developers Conference,” which Skillz attended. (See https://www.skillz.com/wp-content/uploads/Skillz_GDC_2024.pdf).

²⁶ *The Home of Competition*, Skillz, <https://www.skillz.com/page/3/>.

Frequently Asked Questions

What is Skillz?

Skillz is the leading mobile gaming platform that connects players and developers through fun, fair competition. Skillz provides the opportunity for casual gamers to turn their skills into real money and prizes.

Does Skillz use bots?

Every Skillz tournament is between real players. Never bots. Competing against bots is against the fundamental tenets of fair play and real competition on which we were founded. When you play Skillz-powered games, you are matched with real players at your skill level

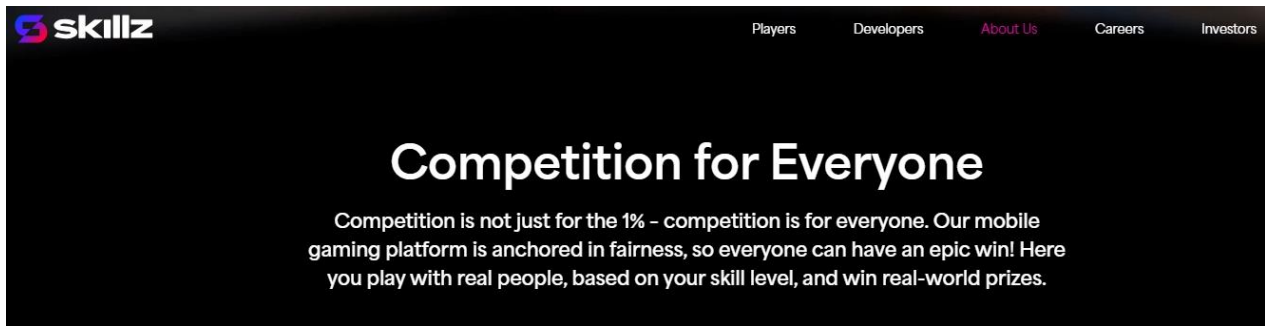
- Skillz’s website features a graphic which prominently states: “Only Real People, No Unfair Bots Here.”²⁷



- On its “About Us” page, Skillz represents that in Skillz-platform games, “you play with real people, based on your skill level, and win real-world prizes.”²⁸

²⁷ *Players*, Skillz, <https://www.skillz.com/players/>.

²⁸ *About Us*, Skillz, <https://www.skillz.com/about-us/>.



189. Skillz makes similar deceptive statements on social media. Skillz claims on X (formerly Twitter), for example, that its “mission” is to “eradicate unfair bots from [competitive mobile gaming].”²⁹



190. Skillz also represents that players will face only real opponents, and never bots, in advertising for the individual games playable on its platform and within those applications themselves.

191. For example, Skillz’s webpage has listed “5-Hand Poker,” developed by Foxpaint AB, as Skillz’s “Featured Game.” The listing for 5-Hand Poker on the Apple App Store represents that players will “[f]ace off against real opponents.”³⁰

²⁹ X Post, @skillz (Mar. 5, 2024), <https://x.com/skillz/status/1765111655741161817>.

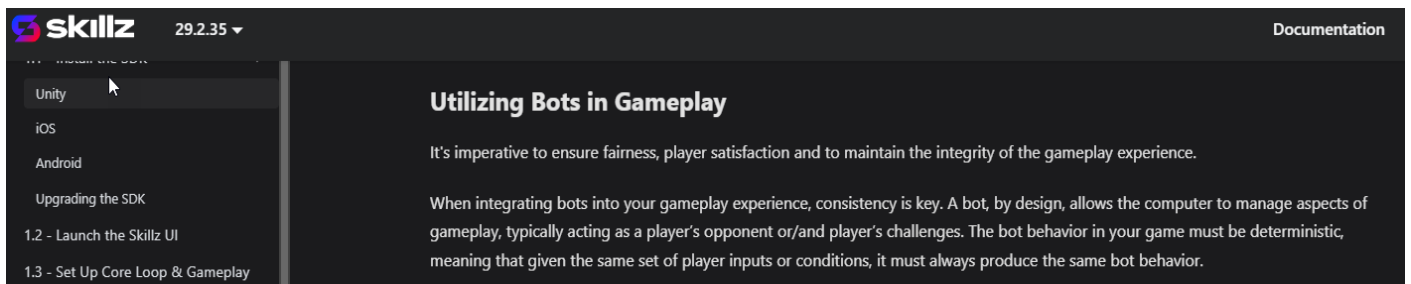
³⁰ “5-Hand Poker, Skillz Real Money Card Game,” Apple App Store, <https://apps.apple.com/us/app/5-hand-poker/id6461255719>.

192. In short, Skillz’s message to consumers is clear that Skillz-platform games are the only trustworthy option for players, because Skillz players will not encounter, and never need to be concerned about, bot opponents.

2. *Contrary to Skillz’s Public Statements, Its Platform Is Not Bot-Free*

193. Notwithstanding its promises and representations to players, games on Skillz’s platform have permitted bot opponents.

194. Skillz’s own online Developer Documentation—directed at game developers who seek to host games on the Skillz platform—sets forth parameters for developers’ “utilizing bots in gameplay,” and expressly permits “integrating bots into your gameplay experience.”³¹



195. The Developer Documentation further provides that bots are permitted “to deliver consistent experiences” and/or for a certain number of “tournaments a player goes through after a new install.”

196. Skillz’s express approval and encouragement of bot use alone eviscerates the categorical “no bots” pledge that it touts.

197. Skillz has claimed in this litigation that its acquiescence to, and encouragement of, bot use Skillz-platform games somehow serves to “ensur[e] gameplay fairness.” (*See* ECF No. 35 at 25.)

³¹ *See Skillz Random and Fairness*, Skillz, <https://docs.skillz.com/docs/randomness>.

198. Skillz does nothing to explain this claimed distinction to consumers, who are informed that Skillz will “never” use bots.

199. Moreover, in its opposition to Papaya’s motion to dismiss, Skillz eschews the broad declaration of “never bots” that it presents to consumers in favor of a carefully crafted statement that Skillz “does not *sponsor* any bots in *cash* games on its platform.” (*Id.* at 25 (emphasis added).)

200. The notable qualification of the bots claim in the court filing—conceding, at minimum, the presence of bots in certain games on the Skillz platform—presents a stark contrast with what Skillz tells the public, indicating that Skillz knows its broader advertising claims cannot withstand scrutiny.

201. In addition to being undermined by Skillz’s own bot-deploying and/or bot-approving practices, Skillz’s unqualified representation that Skillz gamers will only face “real players” and “[n]ever bots” in Skillz-platform tournaments is problematic because Skillz is unwilling and/or unable to fully guarantee that third-party players and game developers are not employing bots on the Skillz platform.

202. Upon information and belief, Skillz’s capabilities to prevent third-party bot usage are deficient, notwithstanding the company’s false promises regarding “state of the art security protocols” and “advanced quantitative analytics” that supposedly foreclose such cheating.³²

203. Third-party developers seeking to host games on Skillz are highly incentivized to incorporate bot opponents into their games to artificially increase active player metrics.

³² *How do I know that my opponent isn’t cheating?*, Skillz (February 17, 2024), <https://support.skillz.com/hc/en-us/articles/203685859-How-do-I-know-that-my-opponent-isn-t-cheating>.

204. Prior to monetizing a third-party game on Skillz’s platform, Skillz requires the developer to demonstrate that the game exceeds a minimum threshold of 100 active players.

205. Upon information and belief, Skillz does not adequately police or prevent the implementation of bots by third-party developers.

206. The use of bots in Skillz-platform games has also been observed by many Skillz players who have publicly shared their negative experiences playing these games, often referring to clear indicia that their opponents could not have been human (despite Skillz’s promises to the contrary).

207. Further, and unlike the vague online comments concerning Papaya Games that form the basis of Skillz’s accusations against Papaya (*see* ECF No. 1 ¶¶ 73-93), many consumers complaining about bot use in Skillz-platform games point to statements by Skillz that misled them—specifically, statements promising that players will face only real human opponents in Skillz-platform games and will never face bots. For example:

- A Galaxy Store review of the Skillz-platform game Solitaire Cube states that the player was deceived and “robbe[d]” by Skillz because the game “gives you deals that are impossible to win” and there are impossible matches against “bots for the app just so you lose and developers get your cash.”³³

³³ “*Solitaire Cube: Classic Card Game*” Reviews, Galaxy Store, <https://galaxystore.samsung.com/detail/com.tetherstudios.solitaire.klondike?langCd=en>.

rach**

★☆☆☆☆ | 2022.11.10

Don't waste your time or money! This app does nothing but pit you against more advanced players though ads say that you are against players of the same level. Then it gives you deals that are impossible to win. You only get 3 times through the draw cards before it starts taking points away from you. This app is nothing but highway robbery. I'm willing to bet those players are bots for the app just so you lose and developers get your cash. Luckily I only spent \$5!

- A Samsung Store review of the Skillz-platform game Blackout Bingo states that the player believes Skillz's advertising is "deceptive" because of her experience playing against bots, and not "other people."³⁴

pink**

★☆☆☆☆ | 2023.08.29

Seriously? How is this just not unregulated gambling? At least on other cash games you can win gems to try for cash prizes. Of course it takes a long time and you rarely win, but still... This is you HAVE to deposit your real cash to play cash games and MAYBE win.... and, are you really playing other people, or bots? And do you even win cash, or stupid prizes? Where is the "withdrawl" feature?? Hard pass, deceptive advertising.

- Another Blackout Bingo player states that the game "100% feels like a scam" and that "the longer you play the harder the bots get," preventing players from continuing to earn prize money after a certain number of games.³⁵

³⁴ "Blackout Bingo – Real Cash Prizes Smash Hit" Reviews, Galaxy Store, <https://galaxystore.samsung.com/geardetail/com.bigrunstudios.blackoutblitz>.

³⁵ *Id.*

kayl**

★★★★★ | 2023.06.06

This game 100% feels like a scam. They send you checks in the mail according to the cash out page, and the longer you play the harder the bots get and you can no longer make any money, only lose money. Save yourself and go to a casino or something instead. This is not a good app unless you have money to waste and get nothing back.

- Another reviewer of Blackout Bingo states that “when you first start playing you will win pretty often,” but eventually will begin “playing bots and not real people . . . so they [Skillz] don’t ever lose money.”³⁶

dark**

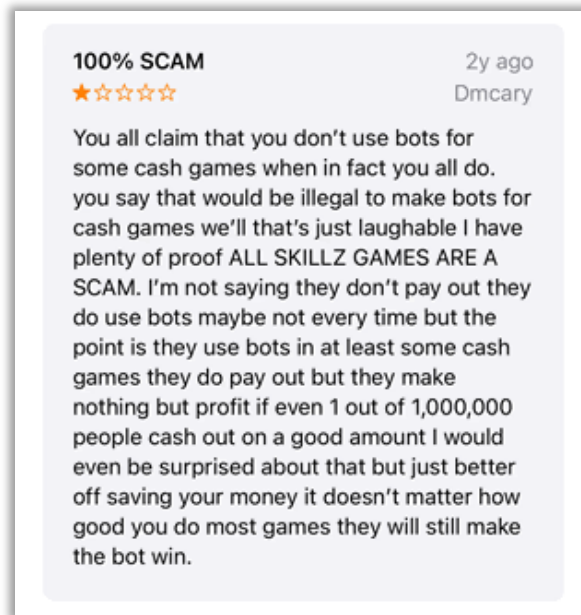
★★★★★ | 2022.03.20

Literally rigged. Of course when they say you can win real money you expect a certain level of BS but this game takes the cake. First, the promo code for free money on your first deposit doesn't work. Always says invalid. Second the game is literally rigged. I've been playing win real money games for years and for the most part they are legit. This one is not. So when you first start playing you will win pretty often. I decided to deposit \$5 and try the money games. That's when I found out the promo code was bogus and a lie. First 3 games I played were \$0.60 to enter and you could win \$1.00. I won those. Then I tried a \$1.00 game to win \$3.00. I won that. Obviously there is some luck involved but I was feeling good. That's when you will notice you are now playing bots and not real people. I have lost 7 games in a row and now have only \$0.40 left. This game is a complete scam. You either play bots or people who are connected to them so they don't ever lose money. Don't bother. SCAM!!!!!!

- An Apple Store Blackout Bingo player complains that Skillz “claim[s] that [it doesn’t] use bots . . . when in fact you all do,” because Skillz will “still make the bot win” no matter how well the player plays.³⁷

³⁶ *Id.*

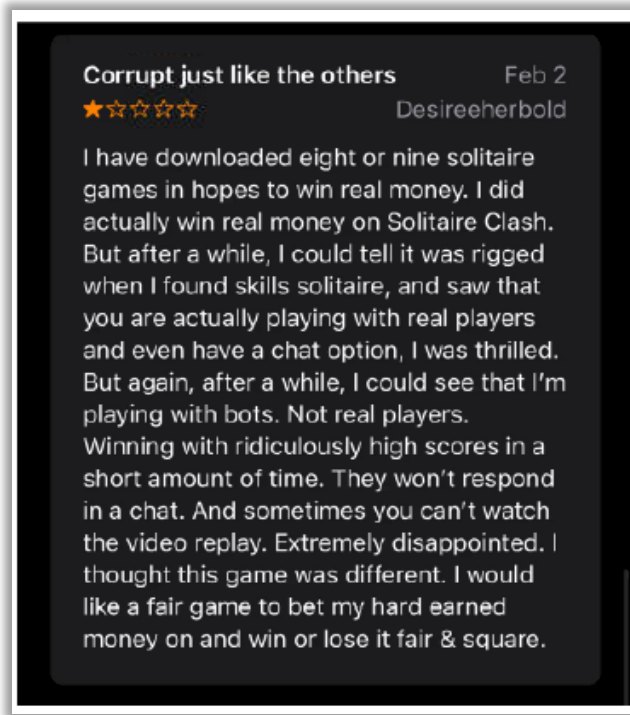
³⁷ “Blackout Bingo: Win Real Cash” Ratings and Reviews, Apple App Store.



208. Skillz reviewers also recount impossibly high scores and other irregularities that made clear their matched opponent was a bot, and not another real human player.

209. For example, an Apple App Store review of Solitaire Cube states that the reviewer “could see that I’m playing with bots” because competitors were “[w]inning with ridiculously high scores in a short amount of time.”³⁸

³⁸ “Solitaire Cube” Ratings and Reviews, Apple App Store (Feb. 2, 2024).



210. Skillz players, like the poster immediately above, have also observed that Skillz’s “match replay” feature often is unavailable after the user loses a fairly high proportion of matches in a suspicious manner.³⁹

211. For example, 21 Blitz player “CardSharkJG” specifically states a belief that Skillz “lie[s] about how fair the platform is,” in part because of the absence of replay to verify that the match was played against a real human.

³⁹ “21 Blitz – Blackjack for Cash” Ratings and Reviews, Apple App Store (Oct. 6, 2020 and Feb. 10, 2023).



CardSharkJG, 10/06/2020

Not to be trusted.

I've had just about every kind of problem you can possibly think of with these Con Artists. That's exactly what they are. They lie about how fair the platform is but in reality they have over 30 different way to rip you off. Player support is no support at all. They treat you like you've stolen something from them after they rip you off. They respond to every single message with pre written generic responses. Which is only possible if they're already aware of the problem. Lost matches with no replay. You just have to take their word for it. I caught them cheating and stealing from me so many times until I was given \$300 to be quiet. Skillz as a whole seem to me to be very unethical and I would rather my whole family starve to death than work for such a shadily crooked group of people. Every single person there should be incarcerated. And I have proof of everything I have stated and would testify under oath against them. SHAME ON YOU SKILLZ. I KNOW YOUR PARENTS TAUGHT YOU ALL TO BE BETTER THAN THE CROOKS THAT YOU ALL ARE. YOU DESERVE TO BE SUED IF NOT PLENTY YEARS OF JAIL TIME FOR ALL THE FALSE ADVERTISEMENT AND MISINFORMATION. THE WAY LEVEL OF UNETHICAL BEHAVIOR LETS ME KNOW THAT YOU ALL ARE MORE CORRUPT THAN POLICE AND POLITICIANS.

212. Another 21 Blitz player recounts that while “[m]ost of the time a replay is available to verify that there is no cheating taking place,” around “25-30% of the time it is not [available] and all signs point to cheating.”

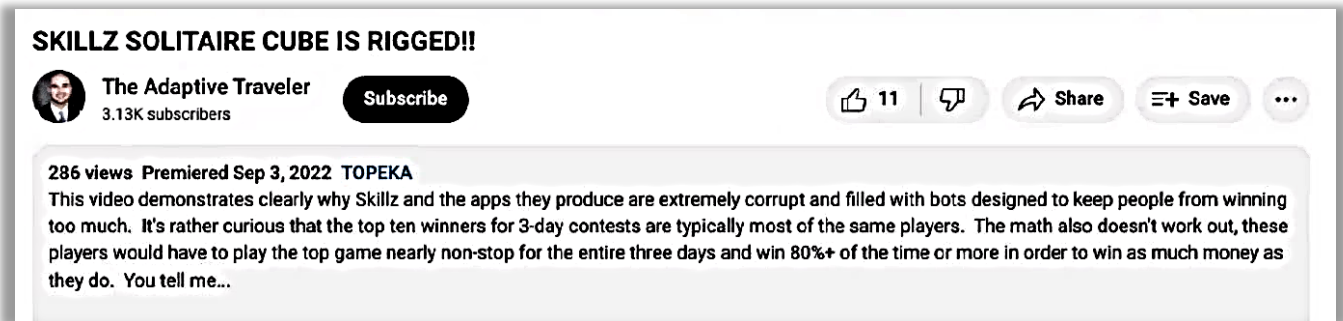


Amyyyyyyyyyyyyyyyyyy E, 02/10/2023

Be prepared to lose money

The game itself is fun. The way they match is unfair and you are set up to lose. Most of the time a replay is available to verify that there is no cheating taking place, however like 25-30% of the time it is not and all signs point to cheating. If you are curious about how cheating occurs, google it. It is apparently a widespread issue and as soon as anyone brings in it in the chat, they are immediately shushed and told to report it. Once reported you are never told the findings and they keep your money either way. To top it all off, they recently made some changes in their withdrawal policies, it would appear. I have always cashed out and within 2 days the money was back in my bank account. Now, I was informed after questioning it, they are sending paper checks and it will take weeks or months to receive them. They told me this occurs when the winnings are higher than the deposits, which I can assure you was not the case in my instance. User beware!

213. One Skillz player created a YouTube video exposing “why Skillz and the apps they produce are extremely corrupt,” observing that opposing “players” have implausible score histories that would require “play[ing] the game nearly non-stop” and “win[ning] 80%+ of the time or more.”⁴⁰ The player states that they have “long played [the Skillz-platform] Bubble Cube and Solitaire Cube game.”⁴¹ As a result of Skillz-platform games’ use of bots, the player states that they feel they have been “screwed over” and wonders “how many people on [Skillz’s] platform are actually real.”⁴²

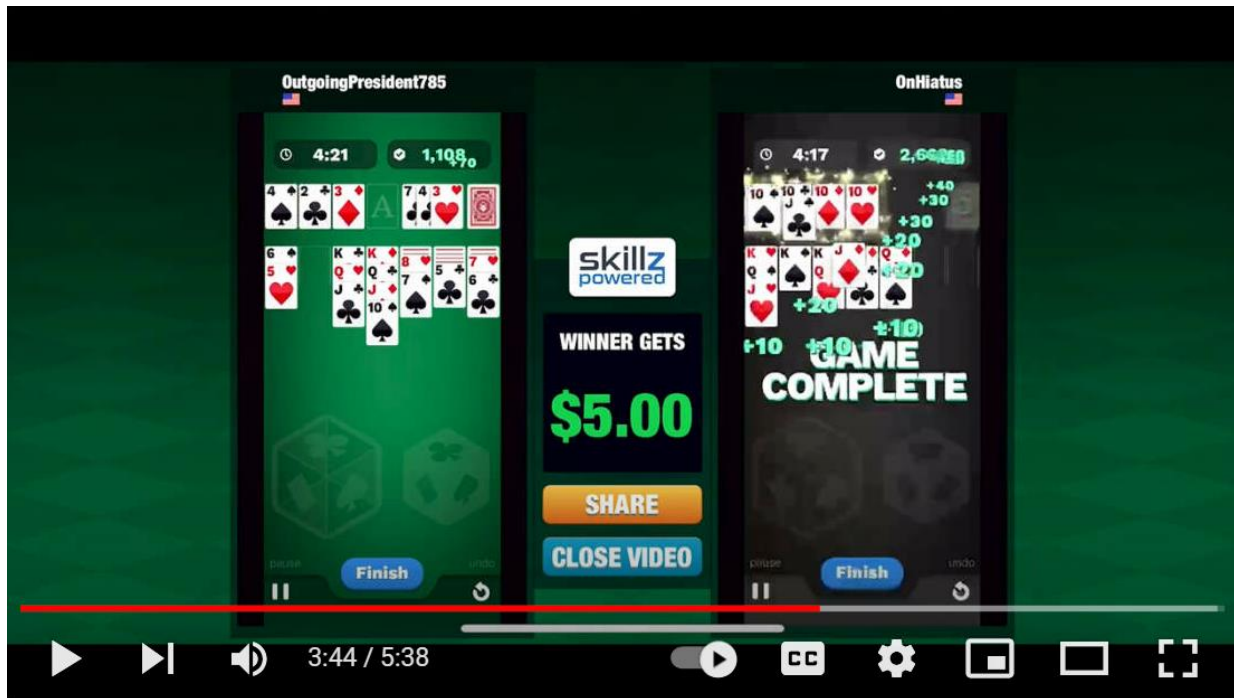


214. The aforementioned Skillz player’s YouTube video also included a video screen-capture recording of a bot opponent achieving an implausibly high score in a \$5.00 match of Solitaire Cube:

⁴⁰ The Adaptive Traveler, *Skillz Solitaire Cube Is Rigged!!*, YouTube (Sept. 3, 2022), <https://www.youtube.com/watch?v=1FlpvHRC5sc>.

⁴¹ *Id.* at 0:22.

⁴² *Id.* at 5:00-5:13.



215. The foregoing examples are just the tip of the iceberg, and there are many other instances of complaints by Skillz users.

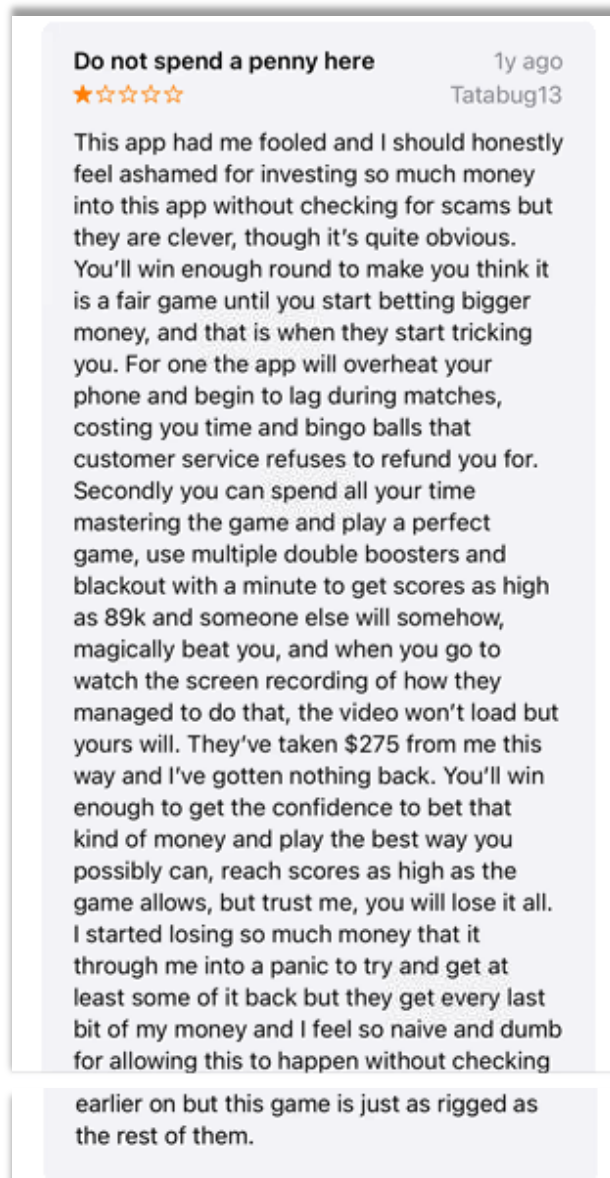
216. Skillz users also have made clear that Skillz’s representations about fairness, matchmaking, and bot usage induced them to play Skillz-platform games.

217. For example, the above-cited player reviews make clear that, once the players discovered that Skillz’s promises of bot-free play were untrue, the players felt that Skillz-platform games were a “lie,” a “cheat,” a “scam,” and rife with “deceptive advertising.”

218. These players make clear that Skillz’s representations about fair and bot-free play were material to their decision to play Skillz-platform games.

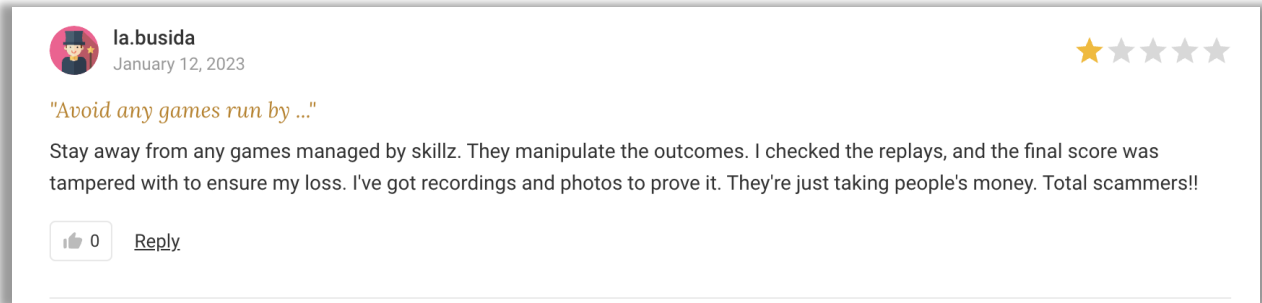
219. Many users who feel cheated by Skillz’s false representations are also left with the impression that all mobile competitive gaming platforms are “corrupt” or rig their games against the player; such players stop playing similar games (such as Papaya Games), and advise others not to play such games.

220. One Skillz Blackout Bingo player recounts that Skillz “had [her] fooled,” and advises players to “not spend a penny” on Skillz platform games.⁴³



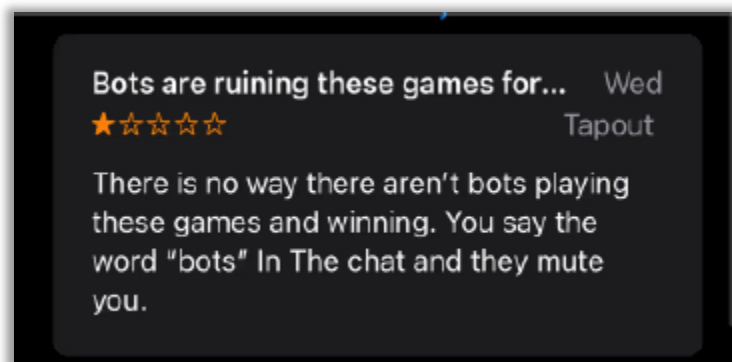
⁴³ “Blackout Bingo: Win Real Cash” Ratings and Reviews, Apple App Store.

221. Another user notes that they “checked the replays,” and has “records and photos to prove” that Skillz games “manipulate the outcomes.”⁴⁴



222. Upon information and belief, Skillz also blocks, mutes, or bans players who complain about bot use within games on Skillz’s platform.

223. For example, the Solitaire Cube player below claims that he was “mute[d]” in the game’s chat by Skillz or its moderators for raising a concern about the presence of bots.⁴⁵



224. Similarly, a review of the “Pool Payday” game on the Skillz platform pointed out that Skillz “deleted [their] last review” after the player reported both bot usage and (as discussed further below) delays in receiving their cash withdrawals.⁴⁶

⁴⁴ Skillz Reviews, <https://skillz.worthepenny.com>.

⁴⁵ “Solitaire Cube — Win Real Cash” Ratings and Reviews, Apple App Store.

⁴⁶ “Pool Payday: 8 Ball Pool Game” Ratings and Reviews, Apple App Store.



225. Given the above, it is clear that Skillz’s repeated and highly publicized presentation of its platform as “never” incorporating bots is false and deceptive.

C. Skillz’s Other Hypocritical and Defamatory Anti-Papaya Marketing

226. Despite Skillz’s own use of bots and consumers’ negative experiences with its platform, Skillz continues to publicly, and falsely, represent that Skillz is “combat[ing] the deceptive usage of bots . . . in [the mobile gaming] industry” to create “a fairer future in gaming,” and accuse Papaya and other competitors in the space of utilizing bots in their games.⁴⁷

227. Skillz makes similar misleading claims regarding bot use in the industry to its investors and other business partners.

228. In Skillz’s Q4 2023 earnings call, Andrew Paradise claimed that Skillz is “the leading company that does not engage in bot fraud,” and that “elimination of this practice would dramatically benefit [Skillz].”⁴⁸

⁴⁷ Rachel Kaser, *Skillz CEO says company isn’t done fighting bots in mobile gaming*, GamesBeat (May 9, 2024), <https://venturebeat.com/games/skillz-ceo-says-company-isnt-done-fighting-bots-in-mobile-gaming/>.

⁴⁸ Ahmed Abdulazez Abdulkadir, *Earnings call: Skillz Inc. reports Q4 results, outlines path to profitability*, Investing.com (Mar. 15, 2024), <https://www.investing.com/news/stock-market-news/earnings-call-skillz-inc-reports-q4-results-outlines-path-to-profitability-93CH-3340001>.

229. Paradise has also asserted that Skillz “stands alone” in its “commitment to fair play for skill-based gaming,” to the exclusion of all others.⁴⁹

230. Skillz’s filing of the current lawsuit is an extension of its campaign to publicly position itself as a noble defender of consumers and denigrate Papaya as not offering “fair” or “skill-based” games—most saliently, by generating a great deal of additional publicity for Skillz’s accusations.

231. In Skillz’s Q1 2024 earnings call, Paradise referred to the current lawsuit against Papaya as a “key litigation matter[,]” and part of Skillz’s so-called “fairplay initiative[,]” to “eliminate bot[s] that defraud consumers in our industry.”⁵⁰

232. Skillz also has explicitly and transparently leveraged litigation against Papaya (and other competitors) in Skillz’s marketing.

233. For example, on June 25, 2024, Skillz posted on various social media links to a post on the website Bonus.com titled “Papaya Gaming Admits Bot Use, Claims No Deception.”

234. Thanking Bonus.com for “covering this story,” making statements such as “[f]raud is fraud,” and attacking “scam[s]” as “fast becoming a systemic issue,” Skillz exploited the Bonus.com post to once again crown itself champion of “protect[ing] innocent players from losing their hard-earned money” (notwithstanding that Skillz players frequently lose their money on the Skillz platform) and ask players to “[j]oin us” in challenging “#botfraud.”

⁴⁹ *Skillz Inc. (SKLZ) Q2 2023 Earnings Call Transcript*, Seeking Alpha (August 2, 2023), <https://seekingalpha.com/article/4623032-skillz-inc-sklz-q2-2023-earnings-call-transcript>.

⁵⁰ *Skillz Inc. (SKLZ) Q1 2024 Earnings Call Transcript*, Seeking Alpha (May 10, 2024), <https://seekingalpha.com/article/4692073-skillz-inc-sklz-q1-2024-earnings-call-transcript>.



Skillz

18,627 followers

20h • 🌐

+ Follow ...

Fraud is fraud. Bot usage in skill-based, real money gaming is fast becoming a systemic issue. What makes this a scam?

1. Players are not aware they are playing against a bot
2. The company can fix the outcome of the game to its advantage
3. When a player loses to a bot the company keeps the money

It's time to put an end to this, and protect innocent players from losing their hard-earned money. We are on a mission to change this. Join us.

#fraud #botfraud #fairplay #scamalert #missiondriven

<https://lnkd.in/eNsG9zbd>



Papaya Gaming Admits Bot Use, Claims No Deception

bonus.com

👍 52

10 reposts

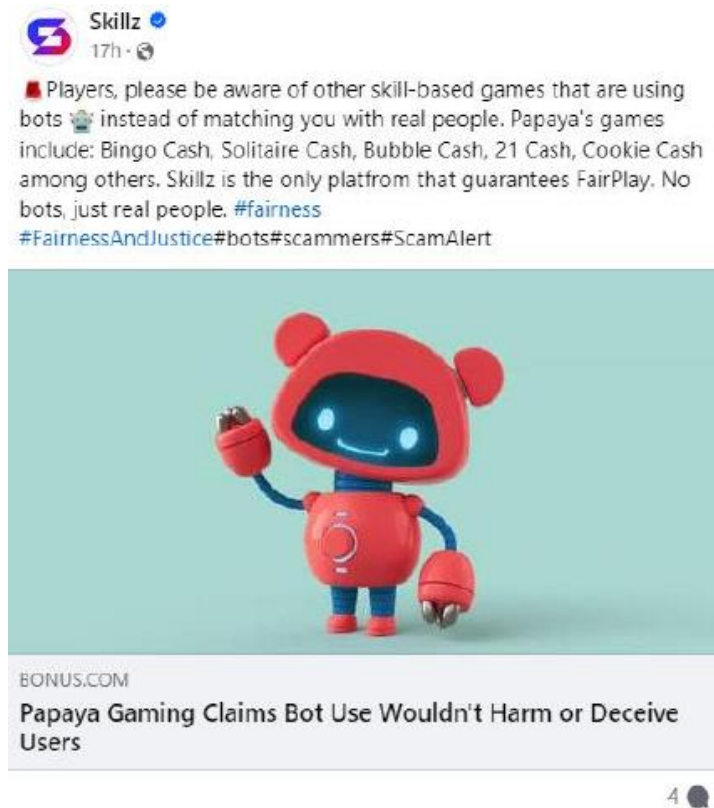


Skillz

@skillz

Thank you @BonusUpdate for covering this story. Bot fraud is a systemic issue in the billions of dollars, affecting millions of players. We must put an end to this NOW! #esportsnews #fairplay #bots





235. Numerous Skillz employees then re-shared these posts on their individual LinkedIn pages.

236. Upon information and belief, the Skillz employees shared these posts on their individual LinkedIn pages at Skillz’s direction.

237. This latest smear campaign by Skillz is particularly egregious for several reasons.

238. **First**, notwithstanding Skillz’s transparent efforts to paint itself as a benevolent organization concerned solely with “fair play,” Skillz very much wants players to “los[e] their hard-earned money” to increase Skillz’s bottom line.

239. **Second**, as explained above, games on Skillz’s platform are not bot-free despite Skillz’s repeated assertions to the contrary.

240. **Third**, Skillz knew full well that Papaya did not “admit” in this litigation that its platform features bots in light of the court proceedings and filings preceding the Bonus.com post.

241. Moreover, at a May 10 Court conference that Skillz’s counsel attended, Papaya’s counsel represented that the platform does not incorporate bots (and that a written certification would be forthcoming, which was subsequently provided).

242. **Fourth**, after the author of the Bonus.com post retracted the statement that Papaya “admits” bot usage and issued a correction in the post, Skillz continued to display its social media posts about the article which continued to feature the previous, retracted misrepresentations.

243. Upon information and belief, Skillz was involved in the financing, creation, and and/or dissemination of the Bonus.com post.

244. Bonus.com is a portfolio website of Catena Media, a public relations company that calls itself an “affiliate marketing partner for online sports betting and casino operators,”⁵¹ and creates content for clients in exchange for payment.⁵²

245. Upon information and belief, Skillz’s crafting and/or disseminating of biased messaging concerning Papaya and other mobile gaming companies, and passing such messaging off as having been generated independently and not at Skillz’s behest, is not limited to the Bonus.com post and the 4FairPlay Website.

246. Tellingly, when Papaya’s counsel sent a cease-and-desist letter to Skillz’s counsel concerning the Bonus.com post, Skillz’s social media posts were removed.

⁵¹ *Homepage*, catenamedia, <https://catenamedia.com>.

⁵² *Strategy*, catenamedia, <https://catenamedia.com/about-us/strategy/> (“Paid Media constitutes a large new vertical that will expand our reach and market exposure while reducing our dependence on state launches, creating a more resilient business over time.”)

247. In July 2024, Skillz filed a very similar lawsuit against another a well-known mobile gaming competitor, Voodoo SAS, alleging that Voodoo SAS’s games deploy bots and are falsely advertised as “fair” and “skill-based.”⁵³

248. Plainly, part and parcel of Skillz’s campaign to aid its flailing prospects involves the rapid-fire institution of legal proceedings against other mobile gaming companies.

D. Skillz Dupes Consumers By Impeding Their Cash Withdrawals

249. In marketing itself as the only “fair” skill-based mobile gaming operator, Skillz touts how players using the platform can “win real-world prizes” including cash.

250. Skillz further informs players that they can “withdraw [their] winnings at any time.”


251. For example, Skillz imparts that message on its “Support” page for the question, “How does Skillz work? Can I actually win real money?”

⁵³ *Skillz Platform Inc. v. Voodoo SAS*, No. 24-cv-04991 (S.D.N.Y. filed July 1, 2024).

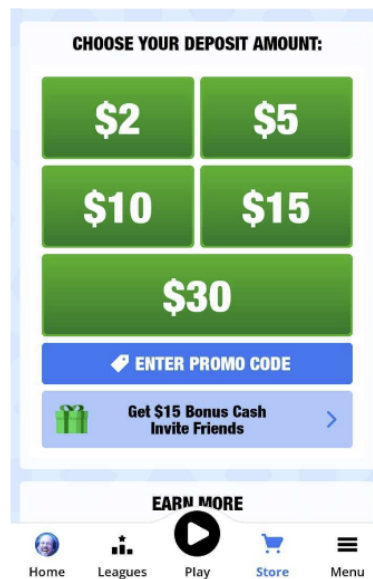
How does Skillz work? Can I actually win real money?

March 16, 2024 13:05

Follow

Skillz is a multiplayer tournament platform that lets you compete in mobile games with other people around the world for either real cash or our virtual currency, .

To play for real money, tap the **Store** button on the main menu and choose your deposit amount. You'll then be prompted to enter your credit card number or PayPal account information. Once you make a deposit, you can use that money to enter cash tournaments and win real cash prizes. You can then withdraw your winnings any time by going to **Menu>Account>Withdraw**.

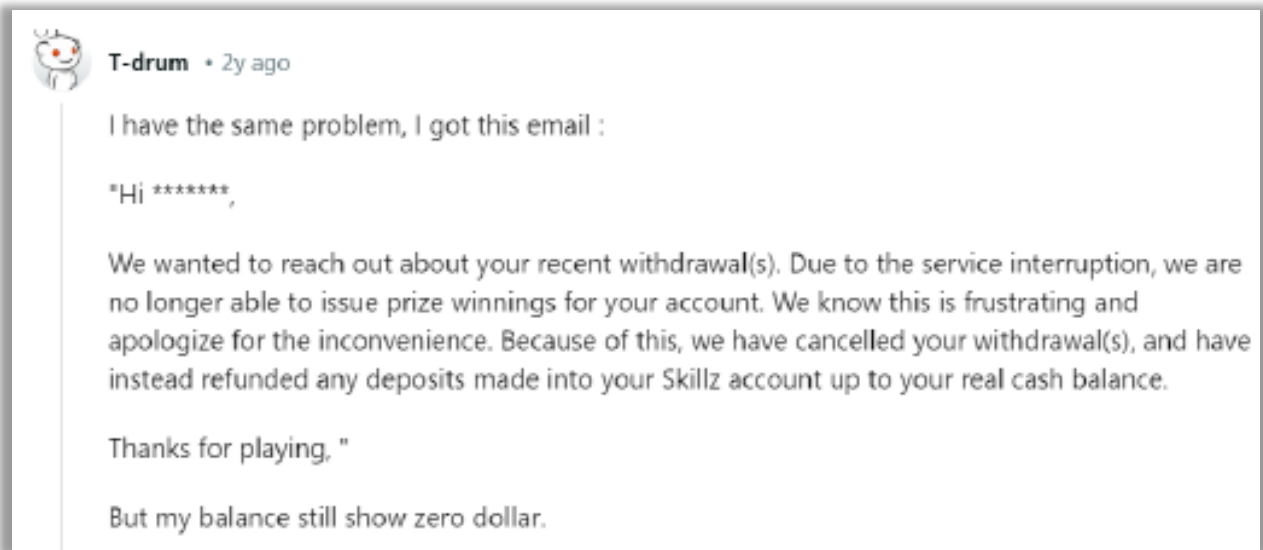


252. Skillz also touts the withdrawal of player earnings from Skillz-platform games as a “[s]ecure” and “[s]afe” process, claiming that players can trust Skillz to handle withdrawals in an efficacious manner and that they will actually receive the funds they seek to withdraw.

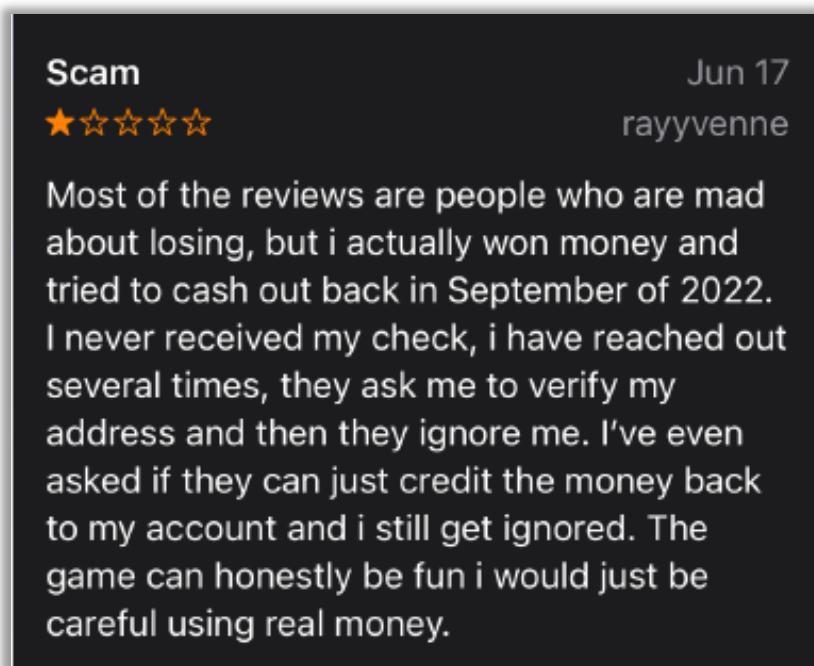
253. In practice, however, players are *not* able to withdraw their cash “at any time,” and sometimes are prevented from withdrawing their cash at all.

254. Numerous players have complained about their inability to retrieve their money as promised, as they were frustrated to be informed that their winnings were delayed, or in some cases wholly unavailable.

255. For example, one player noted how a purported “service interruption” was used as the justification for Skillz being “no longer able to issue prize winnings” to their account, and the player’s withdrawals were thus “cancelled.”



256. Other examples of consumer dissatisfaction with what they viewed as fraudulent and deceptive conduct with respect to withdrawals are as follows (among many others):



This app is a scam

edited Jun 24



Drohxuwh

They don't pay your winnings and in the reviews they say to email their support but they never reply.

carr**

★☆☆☆☆ | 2023.11.04

I would give it zero stars, but it won't let you. It has tons of ads, it never pays out even when you meet all the requirements it comes up with new ones. Three months later I still have never received anything from them. False fake game, false advertising, and locks up to much

brng**

★☆☆☆☆ | 2023.09.17

DONT DEPOSIT YOUR MONEY WITH THIS DEVELOPER YOY WILL NOT GET YOUR WINNINGS AT CASH OUT. VERY ANGRY CANT GET A REFUND SENDS YOU THROUGH LOOPS HOLES. THE TRUTH

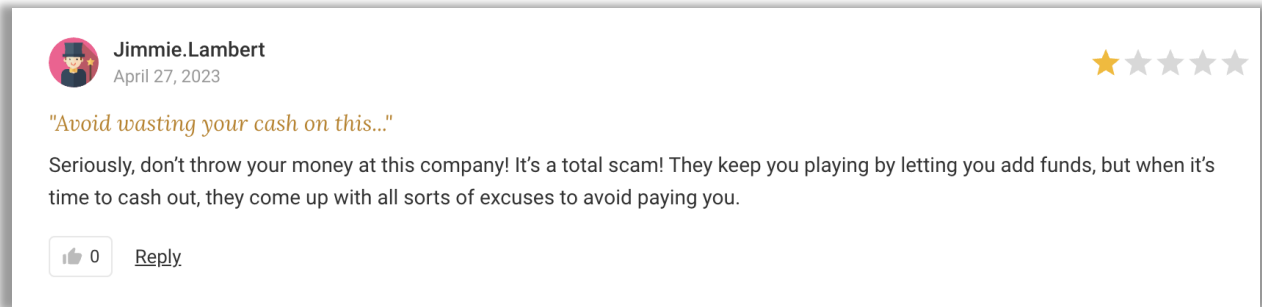
mini**

★☆☆☆☆ | 2023.09.12

After losing I took the last bit of money I had and tried to withdraw it and asked me to verify my email I did it asked me to verify my phone number I did then it acted like I didn't do anything so I did it again this time I got nothing but error messages it was obvious it didn't want me to cash out

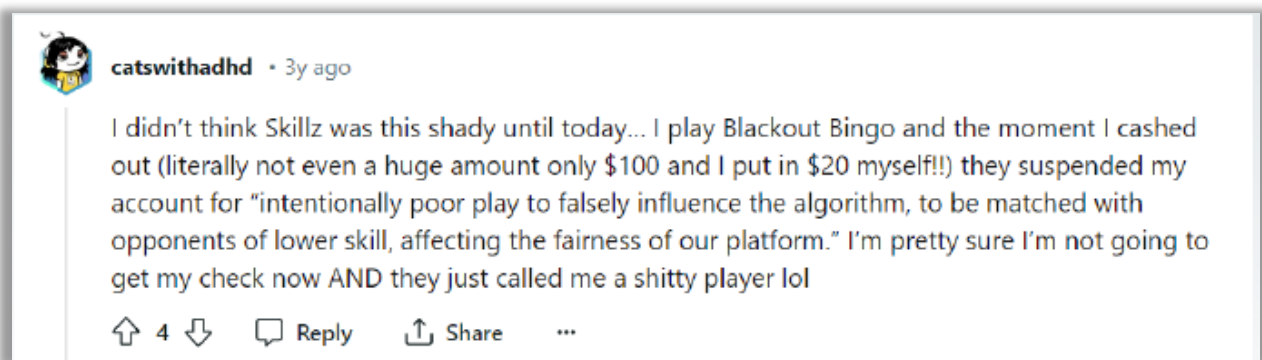
257. As one player explained, Skillz is a “total scam” because “when it’s time to cash out, they come up with all sorts of excuses to avoid paying you.”⁵⁴

⁵⁴ *Skillz Reviews*, <https://skillz.worthe penny.com>.

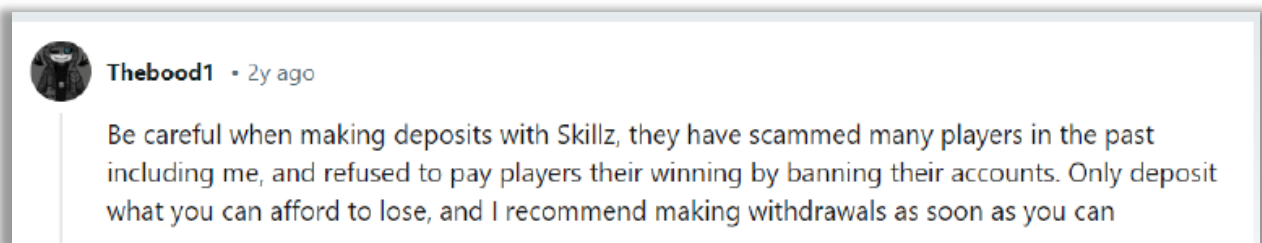


258. Upon information and belief, Skillz also has suspended and/or banned accounts in order to refuse to pay players their winnings.

259. For example, one player noted how their account was suspended because they were accused of “intentionally poor play.”



260. Another player asserted that they were “scammed” like “many players” when their account was banned and they were refused payment.



261. Other players who have contacted Skillz to report the failure to receive funds they had withdrawn report that Skillz ignores the players' concerns and makes no attempt to resolve the issue or to confirm that the players will receive their winnings.⁵⁵

megl**

★ ★ ★ ★ ★ | 2024.02.01

Close my account and stole my money for no reason customer support is completely useless avoid your question and just says we're sorry for the inconvenience wile not actually acknowledging that you said anything

IV. SKILLZ AND DEVELOPERS OF GAMES THAT ARE HOSTED ON THE SKILLZ PLATFORM INFRINGE PAPAYA'S INTELLECTUAL PROPERTY

262. As another facet of Skillz's efforts to unfairly compete with the highly successful Papaya Games, similar games have appeared on Skillz's platform that bear striking similarities to—and plainly misappropriate—the distinctive and original features of the Papaya Games (the “Infringing Games”).

A. Infringing Game #1: “CASH OUT BINGO”

263. Skillz, in coordination with game developer Tether, offers a game titled CASH OUT BINGO on the Skillz platform.

264. CASH OUT BINGO was released on June 26, 2023, well after the release of Papaya's BINGO CASH and after BINGO CASH had proven to be highly successful.

265. The CASH OUT BINGO icon is deliberately similar to Papaya's BINGO CASH icon. Both icons feature the stylized word “Bingo” above three prominently featured, multi-

⁵⁵ “Blackout Bingo – Real Cash Prizes Smash Hit” Reviews, Galaxy Store, <https://galaxystore.samsung.com/geardetail/com.bigrunstudios.blackoutblitz>.

colored bingo balls. The center bingo ball in each icon features a dollar-sign set against a white circle:

BINGO CASH (Papaya)



CASH OUT BINGO (Skillz/Tether)



266. CASH OUT BINGO also features a user interface that is deliberately similar to Papaya’s BINGO CASH. The similarities include the use of a dark blue star against a lighter blue square for the Bingo board’s center daub (or square), the use of a blue elongated pill-shaped button for the Bingo board’s center daub (or square), the use of a blue elongated pill-shaped meter and two circles to display bonuses, and the use of parallel bonus names and icons:

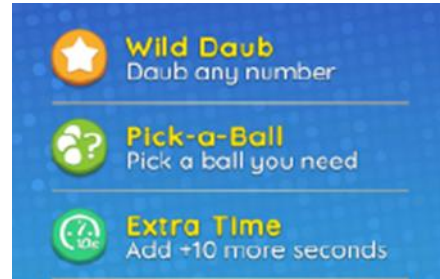
Bingo Cash (Papaya)

14	25	42	49	61
9	29	35	50	72
1	21	★	55	66
2	23	44	47	69
13	24	37	57	73

Cash Out Bingo (Skillz/Tether)

13	26	39	50	66
5	23	44	54	65
11	20	★	57	64
8	17	34	49	71
10	22	37	51	61





267. The foregoing similarities between the Skillz/Tether and Papaya offerings go well beyond imagery and functionality intrinsic to Bingo-style games. Rather, CASH OUT BINGO includes specific artistic and creative choices—and confusingly similar names and icons—that can only be reasonably construed as willful copycatting.

268. Skillz’s website page for CASH OUT BINGO provides a Skillz-branded QR code. When scanned with a mobile phone camera, the QR-code opens the mobile version of the Skillz website page for CASH OUT BINGO. At the top of this mobile page is a link reading “GET.” When a user clicks that link, it opens a page for the CASH OUT BINGO app—for example, on the Apple App Store (on Apple devices), and from Skillz’s own site (on Android devices)—from which a user can download the game directly onto their phone.

269. Upon information and belief, Skillz not only offers CASH OUT BINGO on its platform and approved the game for release, but also was involved in the development of the game and coordinated with Tether on gameplay designs, features, and marketing.

270. According to the Skillz website, Skillz provides the following “Skillz-Powered Features” to CASH OUT BINGO: free matches; all-games account; player chat; cash matches; progression rewards; live events; real-world prizes; and VS friends (permitting a player to challenge friends in head-to-head matches).

B. Infringing Game #2: “BINGO FOR CASH”

271. Skillz, in coordination with game developer Golden Wood, offers BINGO FOR CASH on the Skillz platform.

272. BINGO FOR CASH was released on May 6, 2024, well after the release of Papaya’s BINGO CASH and after BINGO CASH had proven to be highly successful.

273. BINGO FOR CASH features a user interface that is deliberately similar to Papaya’s BINGO CASH. The similarities between the two games include using the color purple in the background, the use of yellow stars to convey daubed numbers, the highlighting of numbers in blue, and using the colors red, yellow, purple, green, and blue for the word “Bingo” across the top of the board:

BINGO CASH (Papaya)



BINGO FOR CASH (Skillz/Golden Wood)





274. The foregoing similarities between the Skillz/Golden Wood and Papaya offerings go well beyond imagery and functionality intrinsic to Bingo-style games. Rather, BINGO FOR CASH includes specific artistic and creative choices—and confusingly similar names—that can only be reasonably construed as willful copycatting.

275. Skillz’s website page for BINGO FOR CASH provides a Skillz-branded QR code. When scanned with a mobile phone camera, the QR-code opens the mobile version of the Skillz website page for BINGO FOR CASH. At the top of this mobile page is a link reading “GET.” When a user clicks that link, it opens a page for the BINGO FOR CASH app—for example, on the Apple App Store (on Apple devices), and from Skillz’s own site (on Android devices)—from which a user can download the game directly onto their phone.

276. Upon information and belief, Skillz not only offers BINGO FOR CASH on its platform and approved the game for release, but also had involvement in the development of the game and coordinated with Golden Wood on gameplay designs and features.

277. According to the Skillz website, Skillz provides the following “Skillz-Powered Features” to BINGO FOR CASH: free matches; all-games account; player chat; cash matches; progression rewards; live events; real-world prizes; and VS friends.

C. Infringing Game #3: “21 BASH”

278. Skillz, in coordination with game developer Luckyo, offers 21 BASH on the Skillz platform.

279. 21 BASH was released on May 5, 2023, well after the release of Papaya’s 21 CASH and after 21 CASH had proven to be highly successful.

280. The 21 BASH icon is deliberately similar to Papaya’s 21 CASH icon. Both icons feature the stylized number “21” in gold lettering against a purple background. Additionally, both icons prominently feature cards bearing the letters “A” and “J”:

21 CASH (Papaya)



21 BASH (Skillz/Luckyo)



281. The foregoing similarities between the Skillz/Luckyo and Papaya offerings go well beyond imagery intrinsic to 21-style games. Rather, 21 BASH includes specific artistic and creative choices that can only be reasonably construed as willful copycatting.

282. Skillz’s website page for 21 BASH provides a Skillz-branded QR code. When scanned with a mobile phone camera, the QR-code opens the mobile version of the Skillz website page for 21 BASH. At the top of this mobile page is a link reading “GET.” When a user clicks that link, it opens a page for the 21 BASH app—for example, on the Apple App Store (on Apple devices), and from Skillz’s own site (on Android devices)—from which a user can download the game directly onto their phone.

283. Upon information and belief, Skillz not only offers 21 BASH on its platform and approved the game for release, but also was involved in the development of the game and coordinated with Luckyo on gameplay designs and features.

284. According to the Skillz website, Skillz provides the following “Skillz-Powered Features” to 21 BASH: free matches; all-games account; player chat; cash matches; progression rewards; live events; real-world prizes; and VS friends.

D. Infringing Game #4: “SOLITAIRE WORLD – WIN CASH”

285. Skillz, in coordination with game developer GameNexa, offers SOLITAIRE WORLD-WIN CASH on the Skillz platform.

286. SOLITAIRE WORLD-WIN CASH was released in 2023, well after the release of Papaya’s SOLITAIRE CASH and after SOLITAIRE CASH had proven to be highly successful.

287. The SOLITAIRE WORLD-WIN CASH icon is deliberately similar to Papaya’s SOLITAIRE CASH icon. Both icons feature three cards spread in an identical manner with the front-most card featuring a golden dollar sign both in its center and top left corner. Additionally, both icons are set against a green, radiating-pattern background:

SOLITAIRE CASH
(Papaya)



SOLITAIRE WORLD-WIN CASH
(Skillz/GameNexa)



288. The foregoing similarities between the Skillz/GameNexa and Papaya offerings go well beyond imagery intrinsic to solitaire-style games. Rather, SOLITAIRE WORLD-WIN CASH includes specific artistic and creative choices that can only be reasonably construed as willful copycatting.

289. Skillz’s website page for SOLITAIRE WORLD-WIN CASH provides a Skillz-branded QR code. When scanned with a mobile phone camera, the QR-code opens the mobile version of the Skillz website page for SOLITAIRE WORLD-WIN CASH. At the top of this mobile page is a link reading “GET.” When a user clicks that link, it opens a page for the SOLITAIRE WORLD-WIN CASH app—for example, on the Apple App Store (on Apple devices), and from Skillz’s own site (on Android devices)—from which a user can download the game directly onto their phone.

290. Upon information and belief, Skillz not only offers SOLITAIRE WORLD-WIN CASH on its platform and approved the game for release, but also was involved in the development of the game and coordinated with GameNexa on gameplay designs and features.

291. According to the Skillz website, Skillz provides the following “Skillz-Powered Features” to SOLITAIRE WORLD-WIN CASH: free matches; all-games account; player chat; cash matches; progression rewards; live events; real-world prizes; and VS friends.

E. Infringing Game #5: “SOLITAIRE CASH”

292. Skillz, in coordination with game developer DNR, offers a game called SOLITAIRE CASH on the Skillz platform.

293. The DNR SOLITAIRE CASH game has been listed on app stores as “SOLITAIRE CASH – JUST PLAY NOW” and “SOLITAIRE CASH: WIN REAL MONEY”.

294. The DNR SOLITAIRE CASH game was released in 2024, well after the release of Papaya's SOLITAIRE CASH and after Papaya's SOLITAIRE CASH had proven to be highly successful.

295. The names of the two games are identical.

296. Skillz's website page for the DNR SOLITAIRE CASH provides a Skillz-branded QR code. When scanned with a mobile phone camera, the QR-code opens the mobile version of the Skillz website page for SOLITAIRE CASH. At the top of this mobile page is a link reading "GET." When a user clicks that link, it opens a page for the "SOLITAIRE CASH: WIN REAL MONEY", from which a user can download the game directly onto their phone.

297. Upon information and belief, Skillz not only offers the DNR SOLITAIRE CASH on its platform and approved the game for release, but also was involved in the development of the game and coordinated with DNR on gameplay designs and features.

298. According to the Skillz website, Skillz provides the following "Skillz-Powered Features" to SOLITAIRE CASH: free matches; all-games account; player chat; cash matches; progression rewards; live events; real-world prizes; and VS friends.

F. Skillz's Involvement in the Dissemination of the Infringing Games

299. While Skillz has represented in the Complaint that Skillz "does not develop the games played on its platform itself," (ECF No. 1 ¶ 27), there is strong reason to doubt that is the case.

300. Upon information and belief, Skillz plays a direct role in development of the Infringing Games.

301. Skillz provides developers with critical software, testing environments, and other support.

302. Skillz develops, among other features, the tournaments and menus utilized in games on the Skillz platform.

303. Skillz also requires all developers to upload the build of their game to the “Skillz Developer Console.”

304. According to Skillz, the upload of developers’ binary game files to their servers “allows Skillz to verify that only specific builds of [their] game can access our production servers and generate matches.”

305. Independent of Skillz’s operations in a development capacity, it bears a number of other responsibilities with respect to the Infringing Games that appear on the Skillz platform, even beyond making those games available on its platform and/or for download via app stores and on Skillz’s own site.

306. For example, Skillz reviews all games that are monetized on its platform.

307. In addition, Section 2 of Skillz’s December 2023 Developer Terms and Conditions of Service provides that a developer “shall modify and upload the Game(s) through the SDK and developer.skillz.com (“Modified Game”)” and that “Skillz may review each Modified Game and determine, in Skillz’s sole discretion, if the Modified Game is eligible for the Monetization Services.”⁵⁶

308. Skillz further reports that it is responsible for paying the developers who offer “cash tournaments” through the Skillz Platform.⁵⁷ These payouts are subject to a revenue sharing arrangement which is thoroughly outlined in the Developer Terms and Conditions of Service and which renders Skillz a stakeholder in the success of the Infringing Games.

⁵⁶ *Developer Terms and Conditions of Service*, Skillz (October 13, 2024), <https://www.skillz.com/legal/>.

⁵⁷ *Receiving Payments*, Skillz, <https://docs.skillz.com/docs/release-your-game-overview>.

309. Skillz advertises the games developed on its platform through its own website, including by displaying the games' icons (near Skillz's own logo).⁵⁸

310. As detailed above, the game listings on Skillz's website contain Skillz-branded links that allow users to download the Infringing Games directly onto their mobile devices.

311. As detailed above, Skillz acknowledges that it provides the following "Skillz-Powered Features" for CASH OUT BINGO, BINGO FOR CASH, 21 BASH, SOLITAIRE WORLD-WIN CASH, and SOLITAIRE CASH (or SOLITAIRE CASH: WIN REAL MONEY) specifically: free matches; all-games account; player chat; cash matches; progression rewards; live events; real-world prizes; and VS friends.

312. Accordingly, Skillz is—at minimum—both materially contributing to the infringement of Papaya's intellectual property and continuing to provide its services to developers it knows are infringing Papaya's intellectual property.

V. SKILLZ'S UNLAWFUL CONDUCT HAS HARMED AND CONTINUES TO HARM PAPAYA

313. Skillz's willful false advertising, defamatory statements, fabricated data, and other deceptive conduct were intended to harm Papaya.

314. Papaya has been harmed by this conduct in at least the following ways.

315. Absent being deceived by Skillz's false representations both about itself and about Papaya, mobile gamers may have chosen to play Papaya Games instead of Skillz-platform games.

⁵⁸ *Skillz Homepage*, Skillz, <https://games.skillz.com/>.

316. The false suggestion that Papaya has been the subject of thousands of customer complaints, is the subject of a new complaint approximately every few seconds, and engages in “scam[s]” tarnishes Papaya’s hard-earned goodwill and reputation.

317. Skillz’s denigration of its competitors also harms Papaya by bringing disrepute to the mobile competitive gaming industry (save for Skillz), thus diverting consumers away from similar games (such as Papaya’s).

318. Skillz’s failure to honor its promises that there are “never bots” and that cash withdrawals can be made “at any time” on its platform also risks leaving consumers with the inaccurate belief that even unaffiliated mobile cash-gaming options are not trustworthy.

319. Skillz and the game developers’ infringement of Papaya’s intellectual property further harm Papaya by creating consumer confusion as to whether the inferior Skillz platform games are sourced by or affiliated with Papaya.

320. Papaya has received complaints and inquiries from customers who mistakenly associate Skillz and/or games on the Skillz platform with Papaya and/or Papaya Games.

321. Upon information and belief, Skillz and/or the other developers involved in the Infringing Games have received complaints or inquiries mistakenly identifying Papaya as involved in the Infringing Games and/or the Skillz Platform.

322. Consumer confusion regarding the Infringing Games prevents Papaya from having control over its own reputation and goodwill. For example, players dissatisfied with the Infringing Games are likely to blame Papaya for their unsatisfactory experience.

323. Papaya often cannot know who the specific aggrieved players are, and thus could not take steps to attempt to assure them that their complaints are not about Papaya at all.

324. The Infringing Games free-ride not only on Papaya’s reputation and goodwill, but also on Papaya’s creativity and original design content.

325. Notwithstanding these issues, Skillz continues to offer the Infringing Games on its platform and advertise those games on the Skillz website.

FIRST COUNTERCLAIM
False Advertising (15 U.S.C. § 1125)
(Against Skillz)

326. Papaya incorporates by reference the allegations in the preceding paragraphs of these counterclaims as if fully set forth herein.

327. As detailed above, Skillz has made false and misleading statements about Papaya and other mobile gaming companies in connection with the fraudulent 4FairPlay Website, including by presenting fabricated data regarding purported complaints about Papaya and deceiving mobile game players into contacting state attorneys general.

328. As detailed above, Skillz sought to hide its involvement in the 4FairPlay Website and its associated front company.

329. As detailed above, Skillz repeatedly represents to consumers that the games available for play on its platform include only human opponents and never incorporate, or have incorporated, bot opponents.

330. As detailed above, Skillz repeatedly represents to consumers that other companies’ games—and specifically Papaya’s—are unfair and/or not skill-based, and that only Skillz can be trusted to provide a fair and skill-based gaming experience.

331. As detailed above, Skillz further has represented to consumers that Papaya “admits” bot use and is engaging in “fraud.”

332. As detailed above, Skillz represents to consumers that cash withdrawals from the Skillz platform are available “at any time.”

333. Skillz’s representations to consumers, including but not limited to the foregoing, are willfully false and/or misleading.

334. Skillz’s representations are made in interstate commerce, in connection with the commercial advertising and promotion of Skillz’s competitive gaming platform and the games offered on that platform.

335. Skillz’s deceptive statements are material to consumers, who choose to play Skillz-platform games based on Skillz’s representations.

336. By making these false and misleading representations to players and prospective players within Skillz advertisements, on Skillz’s website and social media, and within its game applications, Skillz has diverted members of Papaya’s player base, who would not have played Skillz-platform games absent Skillz’s misrepresentations that players will be facing only human opponents.

337. By making these false and misleading representations to players and prospective players within Skillz advertisements, on Skillz’s website and social media, and within its game applications, Skillz has diverted members of Papaya’s player base, who would not have played Skillz-platform games absent Skillz’s misrepresentations as to the ease of cash withdrawals.

338. Skillz’s unlawful actions have harmed Papaya, including by way of lost revenue, market share, and profits, in an amount to be proven at trial.

339. Papaya also was forced to incur legal fees related to the false representations.

340. Skillz’s deceptive statements also have harmed Papaya’s reputation and goodwill in a manner not fully compensable by monetary damages.

SECOND COUNTERCLAIM
Deceptive Trade Practices (New York General Business Law § 349)
(Against Skillz)

341. As detailed above, Skillz has made false and misleading statements about Papaya and other mobile gaming companies in connection with the fraudulent 4FairPlay Website, including by presenting fabricated data regarding purported complaints about Papaya and deceiving mobile game players into contacting state attorneys general.

342. As detailed above, Skillz sought to hide its involvement in the 4FairPlay Website and its associated front company.

343. As detailed above, Skillz repeatedly represents to consumers that the games available for play on its platform include only human opponents and never incorporate, or have incorporated, bot opponents.

344. As detailed above, Skillz repeatedly represents to consumers that other companies' games—and specifically Papaya's—are unfair and/or not skill-based, and that only Skillz can be trusted to provide a fair and skill-based gaming experience.

345. As detailed above, Skillz represents to consumers that cash withdrawals from the Skillz platform are available "at any time."

346. Skillz's representations, including but not limited to the foregoing, to consumers are willfully false and/or misleading.

347. Skillz's representations were made to consumers in the State of New York.

348. Skillz's representations are likely to deceive, and have deceived, consumers, including consumers in the State of New York.

349. Skillz's deceptive statements are material to consumers, who choose to play Skillz-platform games based on Skillz's representations.

350. By making these false and misleading representations to players and prospective players within Skillz advertisements, on Skillz's website and social media, and within its game applications, Skillz has diverted members of Papaya's player base, who would not have played Skillz-platform games absent Skillz's misrepresentations that players will be facing only human opponents.

351. By making these false and misleading representations to players and prospective players within Skillz advertisements, on Skillz's website and social media, and within its game applications, Skillz has diverted members of Papaya's player base, who would not have played Skillz-platform games absent Skillz's misrepresentations as to the ease of cash withdrawals.

352. Skillz's unlawful actions deceive the public and harm consumers.

353. Skillz's unlawful actions have harmed Papaya, including by way of lost revenue, market share, and profits, in an amount to be proven at trial.

354. Papaya also was forced to incur legal fees related to the false representations.

355. Skillz's deceptive statements also have harmed Papaya's reputation and goodwill in a manner not fully compensable by monetary damages.

THIRD COUNTERCLAIM
Defamation (New York Common Law)
(Against Skillz)

356. Papaya incorporates by reference the allegations in the preceding paragraphs of these counterclaims as if fully set forth herein.

357. As detailed above, Skillz has made false and misleading statements about Papaya in connection with the fraudulent 4FairPlay Website, including by presenting fabricated data regarding purported complaints about Papaya and deceiving mobile game players into contacting state attorneys general.

358. As detailed above, Skillz has published and disseminated social media posts falsely accusing Papaya of being a “scammer[.]” and a “fraud.”

359. As detailed above, Skillz has also republished on its social media pages a post from the website Bonus.com with a headline that falsely claims that Papaya has “admit[t]ed” to the use of bots in its games.

360. Upon information and belief, Skillz bears responsibility for the creation, financing, and/or coordination of the Bonus.com post described above, including the inclusion of the false assertion that Papaya has “admit[t]ed” to the use of bots in its games.

361. Skillz disseminated these false statements with, at the time of their dissemination, knowledge of their falsity and with an intent to harm Papaya, or, at the very least, with reckless indifference to the veracity of the disseminated statements.

362. Skillz was not authorized to make and/or disseminate these false statements.

363. Skillz’s false statements were published indiscriminately to third parties over the internet via Skillz’s social media pages, including Twitter/X, Facebook, and LinkedIn.

364. Skillz’s false statements impugn the basic honesty and integrity of Papaya’s business, and have caused damage to Papaya’s reputation in the eyes of the public.

365. Skillz’s unlawful actions have harmed Papaya, including by way of lost revenue, market share, and profits, in an amount to be proven at trial.

366. Papaya also was forced to incur legal fees related to the false representations.

FOURTH COUNTERCLAIM
Civil Conspiracy (New York Law)
(Against Skillz)

367. Papaya incorporates by reference the allegations in the preceding paragraphs of these counterclaims as if fully set forth herein.

368. Skillz conspired with one or more persons, including Fair Play for Mobile Games, Shen, Levin, The Gober Group, and Square Strategies, in connection with the 4FairPlay Website and related conduct.

369. Skillz and these co-conspirators agreed to pursue a common goal of causing harm to Papaya's business and unlawfully created, operated, and controlled the 4FairPlay Website to achieve that purpose.

370. Skillz and these co-conspirators cooperated to post false representations and fabricated data on the 4FairPlay Website with the purpose of willfully and maliciously injuring Papaya's business, with knowledge or reckless disregard for the falsity of the representations and data.

371. Skillz intentionally participated in the furtherance of an unlawful purposes, and its conduct constituted defamation and violated the Lanham Act.

372. As a direct and proximate result of Skillz's unlawful acts, which were committed in furtherance of the above-described conspiracy to harm Papaya's business, Papaya suffered damages, including through reputational harm and loss of goodwill.

373. Papaya also was forced to incur legal fees related to the false representations on the Website.

FIFTH COUNTERCLAIM
Trademark Infringement (15 U.S.C. § 1114)
(Against Skillz, Tether, Golden Wood, Luckyo, GameNexa, and DNR)

374. Papaya incorporates by reference the allegations in the preceding paragraphs of these counterclaims as if fully set forth herein.

375. Papaya is the exclusive owner of the U.S. trademark registrations for names and icons of Papaya Games identified above (*supra* at Section I.B) (the "**Papaya Registrations**").

376. The federally registered Papaya trademarks reflected in the Papaya Registrations are valid, of great and incalculable value, have significant associated goodwill in the United States, are highly distinctive, and have become uniquely and universally associated in the public mind with Papaya in denoting high-quality mobile games and services.

377. The Papaya Registrations are valid and enforceable against third parties, including Skillz.

378. Without Papaya's authorization or consent, and with full knowledge of Papaya's rights in its federally registered trademarks, Skillz and the game developers have willfully misappropriated the use of those trademarks and/or colorable imitations thereof in interstate commerce.

379. The misappropriation of Papaya's federally registered trademarks is intended to, and is likely to, confuse and deceive consumers into believing, initially or otherwise, that the Infringing Games are affiliated with, associated with, or sourced by Papaya, and/or that Papaya has sponsored, endorsed, or approved those games.

380. The foregoing actions are likely to cause, have caused, and will continue to cause confusion, mistake, and deception in the minds of consumers as to the source or origin of Papaya's and/or Skillz's services.

381. As a result of these actions, Papaya has suffered monetary damages as well as irreparable injury including impairment of, and loss of the ability to control, its own reputation.

SIXTH COUNTERCLAIM
Contributory and/or Vicarious Trademark Infringement (15 U.S.C. § 1114)
(Against Skillz)

382. Papaya incorporates by reference the allegations in the preceding paragraphs of these counterclaims as if fully set forth herein.

383. With full knowledge of Papaya’s rights in its federally registered trademarks, Skillz has continued making its services available to developers whose games Skillz knows or has reason to know are misappropriating Papaya’s federally registered trademarks or using colorable imitations thereof in interstate commerce.

384. Skillz, in partnership with these developers, exercises joint control of the Infringing Games.

385. In addition to its direct role in developing games on its platform, Skillz both provides the technology used to monetize the Infringing Games and receives a direct financial benefit from the success these games enjoy owing to their misappropriation of Papaya’s federally registered trademarks or use of colorable imitations thereof.

386. Accordingly, in addition to directly infringing Papaya trademarks, Skillz bears responsibility for the infringing activities of the developers of the Infringing Games, including Tether, Golden Wood, Luckyo, GameNexa, and DNR.

387. As a result of these actions, Papaya has suffered monetary damages as well as irreparable injury including impairment of, and loss of the ability to control, its own reputation.

SEVENTH COUNTERCLAIM

False Designation of Origin, False Association, and/or Unfair Competition (15 U.S.C. § 1125(a)) (Against Skillz, Tether, Golden Wood, Luckyo, GameNexa, and DNR)

388. Papaya incorporates by reference the allegations in the preceding paragraphs of these counterclaims as if fully set forth herein.

389. Papaya is the exclusive owner of the names and icons of Papaya Games discussed above (the “**Papaya Marks**”).

390. The Papaya Marks are valid, of great and incalculable value, have significant associated goodwill in the United States, are highly distinctive, and have become uniquely and

universally associated in the public mind with Papaya in denoting high-quality mobile games and services.

391. The Papaya Marks are valid and enforceable against third parties, including Skillz.

392. Without Papaya's authorization or consent, and with full knowledge of Papaya's rights in the Papaya Marks, Skillz and the game developers have willfully misappropriated the use of those trademarks and/or colorable imitations thereof in interstate commerce.

393. The misappropriation of the Papaya Marks is intended to, and is likely to, confuse and deceive consumers into believing, initially or otherwise, that the Infringing Games are affiliated with, associated with, or sourced by Papaya, and/or that Papaya has sponsored, endorsed, or approved those games.

394. The foregoing actions are likely to cause, have caused, and will continue to cause confusion, mistake, and deception in the minds of consumers as to the source or origin of Papaya's and/or Skillz's services.

395. As a result of these actions, Papaya has suffered monetary damages as well as irreparable injury including impairment of, and loss of the ability to control, its own reputation.

EIGHTH COUNTERCLAIM
Contributory and/or Vicarious False Designation of Origin,
False Association, and/or Unfair Competition (15 U.S.C. § 1125(a))
(Against Skillz)

396. Papaya incorporates by reference the allegations in the preceding paragraphs of the Counterclaims.

397. In the alternative, with full knowledge of Papaya's rights in the Papaya Marks, Skillz has continued making its services available to developers whom it knows or has reason to

know are misappropriating Papaya's trademarks or using colorable imitations thereof in interstate commerce.

398. Skillz, in partnership with these developers, exercises joint control of the Infringing Games.

399. Skillz both provides the technology used to monetize the Infringing Games and receives a direct financial benefit from the success these games enjoy, owing to their misappropriation of Papaya's federally registered trademarks or use of colorable imitations thereof.

400. Accordingly, in addition to directly infringing Papaya trademarks, Skillz bears responsibility for the infringing activities of the developers of the Infringing Games, including Tether, Golden Wood, Luckyo, GameNexa, and DNR.

401. As a result of these actions, Papaya has suffered monetary damages as well as irreparable injury including impairment of, and loss of the ability to control, its own reputation.

NINTH COUNTERCLAIM
Copyright Infringement (17 U.S.C. § 501)
(Against Skillz, Tether, and Golden Wood)

402. Papaya incorporates by reference the allegations in the preceding paragraphs of the Counterclaims.

403. Papaya owns all right, title, and interest to the copyrighted elements in the game BINGO CASH, federally registered as U.S. Registration No. PA0002481705 (the "**Papaya Copyrights**").

404. Without Papaya's authorization or consent, and with full knowledge of Papaya's rights in its federally registered copyrighted works, Skillz, Tether, and Golden Wood have

willfully copied, displayed, distributed, and/or made derivative works of the Papaya Copyrights in connection with the copycat game on the Skillz Platform named BINGO FOR CASH.

405. Skillz's, Tether's, and Golden Wood's infringements of the Papaya Copyrights have caused monetary damages and irreparable injury to Papaya.

TENTH COUNTERCLAIM
Contributory and/or Vicarious Copyright Infringement (17 U.S.C. § 501)
(Against Skillz)

406. Papaya incorporates by reference the allegations in the preceding paragraphs of the Counterclaims.

407. In the alternative, with full knowledge of the Papaya Copyrights, Skillz has continued making its services available to developers whom it knows or has reason to know are offering games that copy, display, distribute, or otherwise constitute derivative works of the Papaya Copyrights, including Tether and Golden Wood.

408. Skillz, in partnership with these developers, exercises joint control of the Infringing Games.

409. Skillz both provides the technology used to monetize the Infringing Games and receives a direct financial benefit from the success these games enjoy, owing to their misappropriation of the Papaya Copyrights.

410. Accordingly, in addition to directly infringing Papaya copyrights, Skillz is liable for the infringing activities of Tether and Golden Wood.

411. As a result of these actions, Papaya has suffered monetary damages as well as irreparable injury.

PRAYER FOR RELIEF

WHEREFORE, Papaya respectfully requests that the Court enter judgment in its favor:

A. Granting permanent injunctive relief:

(i) Prohibiting Skillz (inclusive of its agents, employees, or anyone working for, or on behalf of Skillz) from engaging in false or misleading advertising with respect to its gaming platform or gaming applications that run on its gaming platform, including but not limited to falsely representing that (a) Skillz-platform games never feature bots and that players will only play against other players of similar skill levels, while enabling and/or condoning bot use in games on the Skillz platform, and (b) that cash withdrawals are promptly available on the Skillz platform;

(ii) Prohibiting Skillz from engaging in false or misleading advertising with respect to Papaya's games or gaming platform, including but not limited to falsely representing that Papaya's games incorporate bots or that Papaya has "admitted" the same;

(iii) Requiring Skillz to remove all false or misleading advertisements and marketing, and to correct any erroneous impression persons may have derived concerning the nature, characteristics, or qualities of (1) its gaming platform or gaming applications that run on its gaming platform, or (2) Papaya's games or gaming platform, including without limitation, the placement of corrective advertising and providing written notice to the public;

(iv) Prohibiting Skillz from creating, facilitating, or coordinating any advertising, marketing, or other statements in a manner that suggests such materials originate from or are affiliated with parties other Skillz, or are otherwise unsolicited, including but not limited to online posts, purported customer statements or reviews, and blog or news "articles" on third-party websites or social media (*e.g.*, Bonus.com);

(v) Prohibiting Skillz from presenting any data or information concerning mobile gaming operators or mobile games absent sufficient factual support and disclosure of all sources of such support;

(vi) Prohibiting Skillz and the defendant game developers from using in commerce—or facilitating the use in commerce—or in connection with any goods or services any mark, name, or design that creates a likelihood of confusion with the Papaya Marks and from engaging in any other acts of unfair competition; and

(vii) Prohibiting Skillz and the defendant game developers from offering or facilitating the offering of any game or other content that infringes the Papaya Copyrights;

B. Awarding Papaya actual, compensatory, and consequential damages suffered as a result of Skillz’s wrongful conduct, including but not limited to lost profits and revenues;

C. Awarding Papaya all revenues, profits, and/or unjust enrichment obtained by Skillz as a result of Skillz’s wrongful conduct;

D. Awarding Papaya statutory, treble, and/or punitive damages;

E. Awarding Papaya its costs and expenses in this action;

F. Awarding Papaya reasonable attorneys’ fees and costs, including without limitation pursuant to the fee-shifting provisions of the Lanham Act;

G. Awarding Papaya prejudgment and post-judgment interest; and

H. Granting such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Papaya hereby demands trial by jury for all causes of action, claims, or issues in these counterclaims that are triable as a matter of right to a jury.

Dated: August 5, 2024
New York, New York

Respectfully submitted,

/s/ Anthony J. Dreyer

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